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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1967

No. 805

ARTHUR LEE RANEY, ET AL.,
PETITIONERS,

—v.—

THE BOARD OF EDUCATION OF THE
GOULD SCHOOL DISTRICT, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 9, 1967
CERTIORARI GRANTED JANUARY 15, 1968

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In the

United States District Court

Eastern District of Arkansas

Pine Bluff Division

Civil Action No. PB-65-C-45

Arthur Lee Raney *et al.*,

Plaintiffs,

v.

The Board of Education of the Gould School District, a public body corporate, *et al.*,

Defendants.

Docket Entries

9– 7–65	Complaint filed. Summons issued.
9–11–65	Motion for preliminary injunction filed by plaintiffs.
9–25–65	Motion to quash service filed by defendants.
	Statement in support of motion to quash filed.
	Separate Answer of Harold Pearson filed.
	Statement in opposition to motion for preliminary injunction filed.
11– 6–65	Answer of the Board of Education of the Gould School Board filed.
11–24–65	Trial to the Court before Young, J. Motion to change defendant from Board of Education to Gould Special School District granted.

Docket Entries

	Motion by plaintiff to dismiss Harold Pearson, Chief of Police, as a party defendant, granted.
	Testimony completed at 3:00 p.m. and case taken under advisement.
11–29–65	Order by Young, J. dismissing Harold Pearson filed.
4–26–66	Memorandum Opinion by Young, J. filed.
	Order in accordance with opinion dismissing complaint filed.
5–26–66	Notice of Appeal filed by plaintiffs.

Complaint

(Filed September 7, 1965)

I

The jurisdiction of this court is invoked pursuant to the provisions of Title 28 U.S.C., Section 1342(3)(4). This is an action in equity, authorized by law, Title 42, U.S.C., Sections 1981 and 1983. The rights, privileges and immunities sought to be secured by this action are rights, privileges and immunities guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, as hereinafter more fully appears.

II

This is a proceeding for a preliminary and permanent injunction enjoining defendant Board of Education of the Gould School District, employees, its agents, successors, attorneys and all persons acting in concert with them from:

(1) requiring minor plaintiffs and all other similarly situated to attend the all Negro Field High School for the 1965-66 School term; and

(2) providing public school facilities for Negro pupils in Gould, Arkansas which are inferior to those provided for white pupils.

This is also a proceeding for a preliminary and permanent injunction enjoining defendant Harold Pearson, Chief of Police of the City of Gould, Arkansas and Deputy Sheriff of Lincoln County, Arkansas, and the members, employees, agents or attorneys of said Board from threatening or intimidating plaintiffs in the assertion of their rights secured to them by the Fourteenth Amendment to the United States Constitution.

III

Plaintiffs in this case are Negro citizens of the United States and the state of Arkansas who reside in the city of Gould, Lincoln County, Arkansas.

Minor plaintiffs are pupils in grades five, ten and eleven in the Gould school system who have been refused or denied admission to the predominantly white public schools by defendant school district.

Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated pursuant to Rule 23(a)(3) of the Federal Rules of Civil Procedure. There are common questions of law and fact involved which affect the rights of other Negro pupils who are so numerous as to make it impracticable to bring them all individually before this Court but a common relief is sought and the interests of the class are adequately represented by plaintiffs.

IV

Defendant Board of Education of the Gould, Arkansas School District is a public body corporate organized and operating under the laws of the state of Arkansas. T. Raymond Sage is the Superintendent of Schools of said school district.

Defendant Harold Pearson is the Chief of Police of the City of Gould, Arkansas and a deputy sheriff of Lincoln County, Arkansas.

V

Defendant Board of Education of the Gould School District operates the Gould Public Schools which includes: (a) The Gould high school and elementary school attended primarily by white pupils and staffed by all white teachers;

and (b) the Field High School and elementary school attended by Negro pupils and staffed by Negro teachers.

VI

Defendant Board of Education of the Gould School District permits a number of white pupils who live outside the district to attend white Gould Public School. Such pupils are "bussed" into the white Gould public schools.

VII

Prior to September, 1965, Defendant operated a completely segregated school system for white and Negro pupils. However, in order to comply with the guidelines of the Office of Education of the United States Department of Health, Education and Welfare promulgated pursuant to Title IV, Section 405 of Public Law 88-352 known as the Civil Rights Act of 1964, and to prevent the cutoff of federal funds to it. Defendant submitted a "freedom of choice" compliance plan to said Office of Education by which defendant agreed to desegregate all grades this fall. Said Office of Education approved the Gould desegregation plan.

VIII

During the summer prior to the opening of school in September, 1965, approximately 100 Negro pupils "chose" white schools in defendant Gould School District in all grades. However, on or about September 3, 1965, defendants' School Superintendent Sage advised plaintiffs and other persons similarly situated in grades five, ten and eleven by newspaper notice and some by letter as well that Negro pupils' preferences for the white Gould schools in

those grades would not be honored because of overcrowding.

Plaintiffs and others similarly situated were thus relegated to the all Negro Field School.

IX

The all-Negro Field High School is an old, wooden frame structure in ill-repair. It has no laboratory facilities and unsuitable toilet facilities located outside of the building. The library consists of two well worn sets of encyclopedias. It is rat infested with large cracks in the walls, floors and ceilings. Because of these conditions, the Field School is unaccredited by the Arkansas State Department of Education.

X

The predominantly white Gould High School and elementary school is a new brick structure which has adequate laboratory and science facilities, a workshop, an adequate library, indoor bathroom facilities, central heating and air conditioning and many other facilities which the Field School does not have. The Gould school is rated (A) by the Arkansas State Department of Education.

XI

On or about September 5, 1965 plaintiffs and other Negroes made plans to discuss the problems of school segregation and the inadequacy of facilities at the Field School with Superintendent Sage. Upon learning of plaintiffs' plans, the Chief of Police of Gould, Arkansas, Harold Pearson, who is also Deputy Sheriff of Lincoln County, Arkansas and a School Board member sought out and

threatened several of plaintiffs and/or several of those associated with them with bodily injury if they continued their protests against school segregation and the conditions at the Field School.

XII

Minor plaintiffs and members of their class have been denied and deprived by defendants of the rights secured to them by the Fourteenth Amendment to the United States Constitution solely because of their race or color. Plaintiffs have no plain, adequate or complete remedy at law to redress these wrongs and this suit for injunctive relief is the only means of securing adequate relief. Plaintiffs stand to suffer irreparable injury and damage from defendants unless defendants are enjoined by this court from continuing the practices herein complained about.

WHEREFORE, Plaintiffs respectfully pray that this court advance this cause on the docket, order a speedy hearing at the earliest practicable date, and upon such hearing, enter a preliminary and permanent injunction enjoining defendant Board of Education from:

(1) requiring minor plaintiffs and all other similarly situated to attend the all-Negro Field School for the 1965-66 School Term;

(2) providing public school facilities for Negro pupils in Gould, Arkansas which are inferior to those provided for white pupils;

(3) expending any funds for operation or improvement of the predominantly white Gould Public Schools until and unless the Field School is made substantially equal in

facilities, equipment, curriculum, advantages, opportunities, etc. to the predominantly white Gould schools; and

(4) otherwise operating a racially segregated school system.

Plaintiffs pray that this court enjoin defendants from intimidating, threatening or, in any way, interfering with the exercise of rights secured to plaintiffs and members of their class by the Constitution of the United States of America.

Plaintiffs further pray that this court allow them their costs herein, reasonable attorneys' fees, and such other additional or alternative relief as may appear to the court to be equitable and just.

Respectfully submitted,

/s/ JOHN W. WALKER

JOHN W. WALKER
1304-B Wright Ave.
Little Rock, Arkansas

Answer of the Board of Education of the Gould School District

(Filed November 6, 1965)

For its Answer to the Complaint of Plaintiffs, the Board of Education of the Gould School District, objecting to the Court's Order made at pre-trial conference on November 4, 1965 denying its Motion to Quash Service, and without waiving any of the jurisdictional questions raised by such Motion, states:

1.

That the jurisdictional allegations of paragraph I and II of the Complaint require no answer, but to the extent that they imply that Plaintiffs have been denied any constitutional rights by this Defendant they are denied.

2.

The allegations of paragraph III with reference to the residence of the Plaintiffs and their status with respect to the public schools are admitted. It is denied that Plaintiffs are members of a class so as to be authorized to prosecute this as a class action. It is denied that the class which they purport to represent is so numerous as to make it impracticable to bring them all individually before the Court. It is denied that such purported class is adequately represented by Plaintiffs.

3.

It is admitted that Defendant Harold Pearson is the Chief of Police of the City of Gould and a Deputy Sheriff of Lincoln County, Arkansas, and that T. Raymond Sage is Superintendent of Schools of Gould Special School District

of Lincoln County. It is denied that the Board of Education of Gould, Arkansas, School District is a public body corporate organized and operating under the laws of the State of Arkansas.

4.

The allegations of paragraphs V and VI are admitted.

5.

The allegations of paragraph VII are admitted except that it is denied that the sole purpose of formulating a desegregation plan was for the purpose of qualifying for federal funds. It is also denied that the Office of Education approved the desegregation plan as initially submitted.

6.

The allegations of paragraph VIII are admitted.

7.

It is admitted that the Field High School is an old wooden frame structure. All other allegations of paragraph IX are denied.

8.

It is admitted that the Gould High School and Elementary School are located in brick or block buildings, have indoor bathroom facilities, and that the High School has a Class A rating with the State Department of Education. All other allegations of paragraph X are denied.

9.

The allegations of paragraphs XI and XII are denied, and it is specifically and separately denied that Plaintiffs will suffer any irreparable injury or damage unless this Defendant is enjoined by this Court.

WHEREFORE, this Defendant renews its Motion To Quash Service for the reasons set forth therein, and without waiving said Motion in the alternative prays that the Court dismiss the Complaint, and that this Defendant have judgment for its costs herein expended, and for such other or different relief as may appear to the Court to be equitable and just.

SMITH, WILLIAMS, FRIDAY & BOWEN

By /s/ ROBERT V. LIGHT

By /s/ ROBERT V. LIGHT
1100 Boyle Building
Little Rock, Arkansas
Attorneys for the Board of Education of the Gould School District

Memorandum Opinion of Gordon E. Young, *D.J.*

(Filed April 26, 1966)

The plaintiffs in this case are Negro children who are pupils in grades five, ten and eleven in the Public School System of Gould, Arkansas. This action was brought by their parents and next friends and is a class action seeking an injunction enjoining the Board of Education of the Gould School District from (1) requiring the minor plaintiffs and all others similarly situated to attend the all-Negro Field School for the 1965-66 school term, (2) providing public school facilities for Negro pupils in Gould, Arkansas, which are inferior to those provided for white pupils, (3) expending any funds for operation or improvement of the predominantly white Gould Public Schools until and unless the Field School is made substantially equal in facilities, equipment, curriculum, advantages, etc. to the predominantly white Gould Schools, (4) building any new facilities to replace Field High School at any location other than on or adjacent to the grounds of the Gould Public Schools, and from (5) otherwise operating a racially segregated school system.

The defendant school board claims that it is doing everything possible to correct the very things plaintiffs are complaining of and that no injunction is required or warranted, therefore the case should be dismissed.

The Gould School District encompasses about eighty square miles of argricultural land in Lincoln County in Southeast Arkansas. Almost 20,000 acres of this land is tax exempt because the Arkansas State Penitentiary is located within the district. It is a rural and agricultural area. There are no significant industries within the district, and Gould, with a population of 1,210, is the district's only incorporated town. In the 1964-65 school year the

district derived $56,530 from its millage levy on the assessed value of the real and personal property in the district and most of the rest of its budget of over $200,000 was received from various programs of the State and Federal Government. It is obvious from these facts and from other testimony given at the hearing of this case that this school district is a financially poor one.

The population of the district of about 3,000 consists of 1,800 Negroes and 1,200 white people. There are approximately 880 students in the system and 580 of these are Negro. Prior to 1965 the school board operated two school systems from grade one through twelve on a racially segregated basis. The Field Elementary School and the Field High School were attended by Negro children only. Th Gould Elementary School and the Gould High School had only white students. In the spring of 1965 the defendant school board unanimously voted to accept a desegregation plan which provided for the integration of all twelve grades of the system in the 1965-66 school year in accordance with a "Freedom of Choice" plan.[1]

After the students and their parents had expressed their choice of schools it appeared that there would be overcrowding in the Gould Schools in grades five, ten, and eleven. The school authorities discussed the problem with the appropriate authorities of the Department of Health, Education and Welfare and it was agreed that it would be better for the school to postpone the granting of the freedom of choice in these grades for one year. However, as many Negro children in these three grades as possible who

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NOTE 1: The "Freedom of Choice" plan in this case is of the same type that the Court of Appeals for the Eighth Circuit indicated it would approve in Kemp v. Beasley, 352 F.2d 14 (8th Cir. 1965), therefore it is unnecessary to explain the details of the plan in this opinion.

chose the previously all-white school were accepted in that school on the basis of geographic proximity of their home to the school. The plan as amended was approved by the federal agency.

In other words, all students in the district were accepted in the school of their choice except in the fifth, tenth, and eleventh grades. In these grades some forty Negro pupils expressed a preference to attend the Gould Schools and twelve of them were accepted. The remaining students were assigned to the Field Schools and it is this group that is represented by the plaintiffs in this case.

At the trial plaintiffs offered testimony concerning alleged discrimination within the district which they contend this Court should correct by use of its injunctive powers.

One of plaintiffs' contentions is that the Court should enjoin the defendant school board from maintaining a racially segregated school system. But the testimony discloses that the school board is no longer maintaining such a system. The desegregation plan which it has adopted and which has been approved by the Department of Health, Education and Welfare has brought about more than token integration even though it has been in operation only one year. There are 71 Negro students and 298 white students attending the previously all-white school and there will undoubtedly be more Negro students in this school next year. The Negro students are participating on the school athletic teams and taking part in several other extra-curricular activities at the school. Furthermore, in the school term beginning September 1966 it is the plan of the district to honor the preference of all children in the three grades to which the Choice plan was only partially applicable this year.

Another contention of the plaintiffs is that the school board is discriminating against Negroes by paying Negro teachers salaries lower than those paid to white teachers. The testimony revealed that the base salary paid to Negro teachers is $3,870, while the base salary for white teachers is $4,050.00. The range of salaries for Negro teachers is from $3,870.00 to $4,500.00, and the range for white teachers is $4,050.00 to $5,580.00. The superintendent of the schools testified that he was well aware of the differences in salaries paid to the teachers of different races, and he said that the historical reason for this difference was simply the law of supply and demand. Because of the larger supply of Negro teachers he was able to hire them at lower salaries than those demanded by white teachers. He stated that five years ago, when he was first employed by the school system, the difference in the base salaries was $600. In the last five years the difference has been lowered to $180. The reason the salaries cannot be equalized before next year is purely a financial one. The budget for the 1965-66 school year is practically exhausted and there are no funds available for this or any other purpose.[2] In the course of his testimony, the superintendent assured the Court that the salaries for Negro and white teachers for the 1966-67 school year would be equal.

The primary complaint of the plaintiffs is that they are being discriminated against because the Field Schools to which they have been assigned are grossly inferior to the Gould Public Schools. They show the inferiority of the Fields Schools by citing several examples. Some of these

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Note 2: The total received for all school purposes this year was $225,000. The budget expenditure is $221,000. This is a typical year. The surplus remaining from last year was $1,200.

are: (1) the Field High School is a frame building erected in 1924 which is in a poor state of repair, with holes in the floor and cracks in the wall, while the Gould High School is located in a brick and concrete block building only two years old; (2) the Gould High School has an "A" rating from the Arkansas Department of Education, while the Field High School is unaccredited; (3) the restroom facilities at the Field High School are located in a separate building, causing students to walk outdoors to reach the restroom, while at the Gould High School the restroom facilities are located in the school building itself; (4) the Field High School is heated with upright gas heaters, while the Gould Schools are heated with central heat; (5) the science laboratory facilities at Field High School are inferior to those at Gould High School; (6) the library facilities at Field High are very poor, with few books and no full-time librarian, while the Gould School library contains almost 1,000 books and has a librarian; (7) there is no hot lunch program at the Field Schools, while the Gould Schools have an air-conditioned cafetorium; and, finally (8) courses in journalism and agriculture are not offered at the Field High School, while they are taught at the Gould High School.

The defendant admits that facilities at the Field High School are inferior to those at the Gould Schools, that the situation is a bad one, and that a new school building is needed. It claims that there are no funds available at the present time with which to build such a school and that the school district does not have sufficient borrowing power to secure enough money for such a project. To borrow that much money the school district would need a new bond issue, but since the present millage is at 47 (the maximum

allowable under State law),[3] new millage cannot be added to finance such a bond issue. However, one of the present outstanding bond issues will be paid off by January of 1967, and the nine mills used to finance that issue can be transferred to a new issue. The money obtained through this new bond issue has long been earmarked by the board for the construction of a modern facility to replace Field High School. Therefore, it appears that the defendant school board realizes the need for a new school building and is doing all that it is financially able to do toward filling this need.

On the other hand, the defendant does not admit the degree of inequality between the schools is as great as plaintiffs claim. They contend that although the Field High School building is in very poor condition and is inferior to the Gould High School building, the same is not true for the rest of the buildings in the Field School System. The evidence shows that in the last fifteen years, or at least since 1954, over seventy-five per cent of all money available for construction has been spent on the Negro schools. In fact, the total building expenditures for the Negro schools since 1954 are in excess of $138,000. On the other hand, the only money spent on capital improvements at the Gould School was from proceeds of an insurance policy when the school building burned late in 1963. The new building was built entirely with the funds from this insurance policy.[4] The Field Elementary School is a mod-

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Note 3: Under Arkansas law a school district may not issue bonds in an amount in excess of 15% of the district's assessed valuation of property located within the district. Gould has reached that limit.

Note 4: A Teacherage, consisting of two cottages for occupancy by teachers, was constructed on the Field campus a year or two ago. This was financed locally, and the monthly payments to pay the loan come from rent paid by the teachers.

ern brick and concrete block building built in 1954 with classrooms added as late as 1965. The gymnasium for the Field Elementary and High Schools is a modern concrete block building with excellent restroom, dressing room, and shower facilities, as well as a fine gymnasium and auditorium. The gymnasium at the Gould School is an old frame building in poor repair, with inadequate and unsightly dressing room and restroom facilities. The home economics buildings at both the schools are old buildings which the citizens of the school district have helped repair and decorate, and which are of approximately the same quality. Although it was never definitely established just what scientific laboratory facilities the Field High School has, it is evident from the testimony that they are inadequate and practically nonexistent. However, the laboratory facilities at the Gould High School would hardly be considered adequate or satisfactory. The laboratory is located in an old concrete block building that was once used as a barbeque house. For most of the experiments there is only enough equipment for the teacher to use at a demonstration desk and sink. According to the evidence, no building on either campus is heated by central heat, and in the last two years the same amount of money has been allocated to each of the libraries. The defendant admits that the Field Schools do not have a hot lunch program or an agriculture department but claims that federal aid is being sought, and the superintendent of schools assured the Court that both programs would be established in the Field Schools by the end of this year. Defendant also states that the reason some courses such as journalism are taught in Gould School and not in Field School is that they are elective courses and are not taught unless there is a sufficient demand for them. Therefore the defendant

claims that although conditions at the Field High School are poor, there is not a large degree of inequality between the two school systems.

During the course of the hearing on this matter, after the defendant had admitted the inferiority of the Field High School and had set forth its proposal for building a new facility, plaintiffs moved in open court to amend their petition for an injunction to include enjoining the defendant from building any new facilities to replace Field High School at any location other than on or adjacent to the grounds of the Gould Public Schools. This, it is believed, is the only real issue remaining in the case. The Court granted the motion, and evidence was heard on both sides of this question. The Court also asked counsel for briefs on the question of whether or not the Court could or should order the school district to build its proposed new facilities at any particular location.

It is plaintiffs' contention that the building of a new high school at the site of the old Field High School or on the Field Elementary School grounds would promote and encourage segregation in the school system. Plaintiffs contend that if the new high school was built at one of these locations, only Negro pupils would request that they be assigned there. Plaintiffs also say that in fact this is the intention of the school board. They point out that at the hearing the superintendent of schools stated that probably only Negro children would select the new high school and plaintiff argues that this shows that it is the school board's intention to create a "Negro high school" and not just another high school for the district. Plaintiffs argue that it is a breach of plaintiffs' constitutional rights to allow defendant school board to carry

out a construction program which is designed to bring about or further segregation in the school system.

Plaintiffs also contend that it would be unsound for a school district in the financial condition of the Gould School District to maintain separate school facilities for Negro children. Such a plan would entail considerable duplication and would dilute the quality of education which could be offered to both white and Negro students by a school district of this size.

The defendant contends that the management or administration of the schools has been committed to local school officials and is not within the province of the Court and that selection of the location of a new school facility is an administrative or managerial decision which should be left to those officials whose duty is to determine what is best educationally and administratively for the school system. The defendant claims that there are several reasons why it is unsound to locate the new high school at the site insisted upon by plaintiffs and which support the board's selection of a site adjacent to the Field Elementary School. These facts are (1) that the school district already owns enough land at the Field Elementary School to accommodate the new high school building, (2) the district does not own sufficient land at the site of the Gould High School for this purpose, (3) additional land near the Gould High School is not for sale and would have to be acquired by condemnation at a high price since it is being subdivided into residential lots, (4) the new gymnasium (which has been referred to above) was built on the grounds of the Field Elementary School to accommodate both elementary and high school students in anticipation of the location of the new high school on that campus, (5) that the location of the schools in opposite

ends of town and on opposite sides of a heavily traveled U. S. highway is desirable for the safety of the children and for obtaining the educationally advantageous concept of "neighborhood schools."

The question before the Court is actually two pronged. First, is this Court authorized to tell the school board where to build or not to build a new school building, and second, should the Court do so under the circumstances in this case? These questions are of first instance before this Court, and in fact there is very little authority from any jurisdiction.

In the "landmark" civil rights cases concerning school integration the courts leave no doubt that segregation is and must be a thing of the past. They tell the courts that there can no longer be "Negro schools" and "White schools" and that the courts cannot permit a state to support "segregated schools through any arrangement, management, funds or property. . . ." *Cooper* v. *Aaron*, 358 U.S. 1. In a general way these cases give this and all district courts the authority to take what steps are necessary to insure that there is an end to segregation in our schools.

At the same time these cases also contain language which seems to recognize a limit to the courts' authorization to deal in school affairs. In *Brown* v. *Board of Education of Topeka*, 349 U.S. 294, the court said:

> "school authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles."

In *Briggs* v. *Elliot,* 132 F.Supp. 776, 777 (E.D. S.Car. 1955), a three-judge district court interpreting *Brown* said,

> "Having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the federal courts are to take over or regulate the public schools of the state."

And this Court in *Aaron* v. *Cooper,* 164 F.Supp. 325, 334 (1959) stated:

> "It is not the duty or function of the Federal Court to regulate or take over and operate the public schools. That is still the duty of the duly state-created school authorities."

These cases make it apparent that there is a limit to the court's authority to deal in school matters, although they do not say what that limit is.

In *Board of Public Instruction of Duval County, Fla.* v. *Braxton,* 326 F.2d 616 (1964), the Court of Appeals for the Fifth Circuit approved an injunction issued by Judge Simpson of the District Court for the Middle District of Florida in which the school authorities were enjoined from operating a compulsory biracial school system, maintaining dual attendance areas, assigning pupils and teachers on the basis of color, and from

> "Approving budgets, making available funds, approving employment contracts and construction programs, and approving policies, curricula and programs designed to perpetuate, maintain or support a school system operated on a racially segregated basis."

Although that injunction does not go as far as plaintiffs have asked for in this case, it does go further into the realm of school administration than any other court has gone. Perhaps some of the factors that the case dealt with should be pointed out in that they may limit the scope of the decision.

In that case the court was dealing with a school system that, some eight years after the second *Brown* decision, had done nothing toward bringing an end to segregation. In fact, the board was still maintaining and planning to continue to maintain separate systems for colored and white children with dual attendance areas. The court, of course, was trying to enjoin *all* this type action. Therefore it did enjoin all the policies of the board including its future construction policies which were "designed to perpetuate, maintain or support a school system operated on a racially segregated basis."

In June of 1965 this Court in *Yarbrough* v. *Hulbert-West Memphis School Dist. No. 4*, 243 F. Supp. 65, 71, said:

> ". . . the basic responsibility and authority for operating the schools in a constitutional manner rest upon school boards and school authorities rather than the courts. The question is not what the court would do if it were operating the schools, but whether the defendants are proceeding in a permissible manner from a constitutional standpoint."

This still seems to be the better or most well reasoned role for the court. It should be an ameliorative or corrective body rather than an initiating or policy-making one. Once the school board has made a decision to take a certain action in the administration of the schools, then it be-

comes the Court's duty to determine whether or not this action is constitutional.

However, this Court is not prepared to state that there might not be circumstances under which the Court would be justified in taking action such as that the plaintiff is asking for in this case. Assuming without deciding that this is an area of school policy-making which the court could enter to protect the civil rights of the school district's citizens, this Court does not feel that the circumstances of this case merit such action.

Here the school board has begun a desegregation program for all twelve grades without having been ordered to do so by a court. The delay in the program for the three grades involved in this case is temporary and future plans call for complete integration. The fact that the Negro children who are attending the previously all-white schools are participating in the school's curricular and extra-curricular activities seems to indicate that this plan is more than a pretense or sham to meet the minimum requirements of the law.

The availability of campus area in one place and not the other, the lack of funds to procure more land, and the necessity of locating the new high school near the existing gymnasium designed to accommodate the high school students are all valid reasons for the administration's decision as to the location of the new high school. There is no reason to assume that only Negro students will attend the new high school. In fact, it is a virtual certainty with the progress of integration, building space limitations alone will insure that the new school will be integrated. Certainly these reasons, coupled with the school board's recent initiative toward integrating the schools, do not indicate that the board's plans are solely motivated by a

desire to perpetuate or maintain or support segregation in the school system. Therefore, the Court will not usurp the normal managerial prerogative of the school board to the extent of determining where the new building will be located.

CONCLUSION

Practically all of the questions or problems in this case stem from one major source—the school district has a serious lack of funds. The main problem, of course, is the inferiority of the Field High School. However, if the Court ordered the school board to build a new facility tomorrow the board would be powerless to act. It simply does not have the money to do so. It is obviously not the purpose of an injunction to order someone to do something he is already doing or something which is impossible for him to perform. Therefore, this Court can see no reason for the requested injunction to be issued. The petition will be denied and the case dismissed.

Dated: April 26, 1966.

GORDON E. YOUNG
United States District Judge

Order of Dismissal

(Filed April 26, 1966)

In accordance with memorandum opinion filed this date, the complaint is dismissed.

Dated: April 26, 1966.

/s/ GORDON E. YOUNG
United States District Judge

—1—

Transcript of Hearing of November 24, 1965

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BE IT REMEMBERED, that a hearing was had in the above-entitled and numbered cause, on its merits, before The Honorable Gordon E. Young, Judge of said Court, in the Federal Court Room, Federal Building, in the city of Little Rock, State of Arkansas, on November 24, 1965, beginning at the hour of nine-thirty A.M.

There were present at said time and place, the following appearances:

For the Plaintiffs: Mr. John W. Walker, of Little Rock, Arkansas.

For the Defendants: Mr. Robert V. Light, of the firm of Smith Williams Friday & Bowen, of Little Rock, Arkansas.

—3—

PROCEEDINGS

WHEREUPON, the following proceedings were had in open court in the presence of the Court and counsel for the respective parties:

The Court: Gentlemen, the case for trial is Arthur E. Raney, et al., Plaintiffs, vs. The Gould School District Board of Education. Are the plaintiffs ready Mr. Walker?

Mr. Walker: The plaintiffs are ready, Your Honor.

The Court: Are the defendants ready Mr. Light?

Mr. Light: Your Honor, still reserving the position we took on the Motion to Quash, we are ready to proceed.

The Court: Oh, that's addressed to the fact that the Board of Education was named as the defendant instead of the members of the School Board?

Mr. Light: Essentially, yes, Your Honor. It's two-fold, one is that the Board of Education is not a body-corporate,

subject to suit, the other is that no proper service has been had so as to bind the District or the Board.

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The Court: Who was service had on?

Mr. Light: On a member of the Board, Your Honor.

The Court: How many members of the Board are there, six?

Mr. Light: Five.

The Court: How many of them are here this morning?

Mr. Light: All of them.

The Court: All five of them are here. Well that Motion will be—I don't know whether I denied it formally or not, but it will be denied.

Mr. Light: I have answered reciting that the Court overruled it at our pretrial conference.

The Court: All right. Thank you. Now, Mr. Walker, we have more than one defendant here. I believe we had some discussion about that at our conference. Do you recall?

Mr. Walker: Yes, sir.

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The Court: Do you have a Motion to make in that regard?

Mr. Walker: Yes, sir. I would like to preface it with the statement to the effect that under Arkansas law, the Gould School District is a body corporate and, as such, may sue and be sued. I would at this time like to move to amend our complaint and to have the corporate name of the defendant changed in the complaint to the "Gould Special School District of Lincoln County". I think we had it listed as the "Board of Education of the Gould School District". This is a technicality.

The Court: That will be granted.

Mr. Walker: We would like to have at this time the defendant Harold Pierson, who is Chief of Police of the City of Gould, and also a Deputy Sheriff of Lincoln County, Arkansas, dismissed as a party-defendant.

The Court: I'm sure there's no objection to that Mr. Light?

Mr. Light: Not to that one.

The Court: The motion will be granted and the complaint is dismissed insofar as it relates to Harold Pierson, Chief of Police of the City of Gould and Deputy Sheriff.

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Now, so that I don't forget it, at your convenience, Mr. Light, would you mail me a short order so it will be on file dismissing the complaint as to him?

Mr. Light: Yes, sir.

The Court: It's better to do it that way than simply to have it in this record which may or may not ever be written up.

Mr. Walker: That's right. I would like to call at this time Mr. T. Raymond Sage, Superintendent of Schools of the Gould School District.

WHEREUPON, T. RAYMOND SAGE, called as a witness on behalf of the plaintiffs being first duly sworn, testified as follows:

Direct Examination by Mr. Walker:

Q. Would you state your name please? A. T. Raymond Sage.

Q. What is your occupation, Mr. Sage? A. Superintendent of Schools, Gould School District.

Q. How long have you been superintendent of Schools there in Gould? A. This is the fifth year.

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Q. Would you tell us what your educational preparation is, Mr. Sage? A. Bachelor's Degree from Hendrix College, Master's Degree from the University of Arkansas.

Q. Now, I would like to have you tell the court—give the court some statistics about the Gould School District. What is the enrollment of Gould School District? A. Enrollment or enumeration?

The Court: I think he wants to know how many are in the school.

Mr. Walker: That's right, Your Honor.

The Court: Approximately. I know that varies a little bit.

A. That varies. I would say eight hundred and fifty.

Q. How many of these are Negro? A. A little over five hundred—about five hundred and fifty.

Q. About how many of the five hundred and fifty are in the elementary school—in the Negro Elementary School? A. I would say three hundred. I don't have the figures with me.

Q. Just an estimate will be fine, sir. And about how many of the remaining Negro pupils are in the Negro High School? A. I don't have those figures at all, between two Hundred and two fifty.

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Q. Thanks. How many Negro pupils attend the predominantly white schools in Gould? A. Approximately seventy.

Q. Is that included in the total of five hundred and fifty? A. Yes.

The Court: How many was that—seventy?

Mr. Walker: Seventy.

A. (Continuing) Wait just a minute. We have a little over five hundred in the Field School and approximately seventy negroes in the Gould Schools which would make a total of nearly six hundred.

Q. About six hundred out of eight hundred and fifty?

The Court: It really come out to 570 on the figures he has given you.

Q. All right, then. A. That's close to it.

Q. Now how many pupils who are included in that 850 total reside in the Wells Bayou School District?

The Court: Now that is another school district separate from the Gould School District.

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Mr. Walker: That is right, Your Honor.

The Court: What's the name of it?

Mr. Walker: Wells Bayou.

A. I believe our latest figures show about fifty-five or sixty percent, sir.

Q. How many of those are Negro? A. We have fifty-four from Wells Bayou District attending the Fields School, we have six attending the Gould School which would make a total of sixty.

Q. All right.

The Court: You mean sixty of sixty-five are Negroes?

Mr. Walker: Sixty of sixty-five or so are Negro. Is that right, sir?

A. That's right.

Q. Now, is it true Mr. Sage that up until September of 1965 the Gould School District operated separate schools for Negro and for white pupils? A. That's correct.

Q. Is it true that up until that time all negro puplis were required by the District to attend either the Field High School or the Field Elementary School? A. That's right.

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Q. Is it true that up until that time that the Staff of the Fields Schools—both schools—was all Negro? A. Right.

Q. As of September 1965 what was the rating or the accreditation of the Fields High School? A. The Fields High School did not have a rating, in other words, it was unaccredited. The Fields Elementary School was Class "C".

The Court: Fields Elementary School, Class C?
The Witness: That's right.

Q. Now, would you describe to the court the physical condition of the Fields High School, the main building, first of all of the Fields High School? A. The main building of Fields High School is a frame building consisting of class-rooms, principal's office and adjoining it is the Home Economics Department.

Q. The Home Economics Department, and what else? A. The Home Economics and class-rooms, itself.

Q. Is there another building in that area, Mr. Sage? A. Yes.

Q. What is that building? A. That building, up until this year, had been used for some elementary grades, the

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fifth and sixth grades, but during the summer we built

two additional class rooms at Fields Elementary School, so that those grades could be transferred.

Q. All right. Now, I'm saying that on the same spot of land where the Fields High School is located, in addition to the Home Economics Building and the main building, is there another structure? A. This structure that had been used for the fifth and sixth grades.

Q. What is that being used for now? A. That is not being used.

Q. Isn't there a bath, isn't there a separate bath-house or bath-room? A. Yes, I didn't think about those. The rest-room facilities are in separate buildings.

Q. All right. Would you tell the court, first of all who uses the gymnasium of the Fields High School? A. Well I presume that all high school students use it. All students, elementary students used it too.

Q. How far is the gymnasium for the Negroes in Gould, away from the high school facilities? A. I would say about four blocks.

Q. About four blocks away, so then that, it is on the premises of the elementary school? A. That's right.

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Q. What grade pupils attend Fields High School? A. Seventh through twelfth.

Q. At this point I would like for you to state the salary of the principal of the Fields High School? A. The salary of the principal of Fields High School is $5100.

Q. What are his responsibilities? A. He is responsible for maintaining discipline, overseeing the work of the teachers, he just runs that Fields Elementary and Fields High School.

Q. What is his educational qualifications? A. He has a

Bachelor's Degree—I don't recall what school it is from and some work towards his Master's Degree.

Q. I see. In your opinion, is he academically qualified to be a high-school principal? A. He is academically qualified for a Class "C" or a Class "B" rating. A Class "A" rating requires a Master's Degree.

Q. Would he be qualified to be principal of the Gould High School? A. No.

Q. What are the qualifications of the Negro School teachers generally, in Gould? A. Every teacher has a Bachelor's Degree and at least two teachers have Master's Degrees out of seven, the others have Bachelor's Degrees.

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Q. Are these generally as well prepared or as well qualified as the white school teachers? A. Technically on paper they are. Whether they are as well qualified actually to teach classes, I wouldn't be prepared to say. I did not observe them teaching.

Q. You have not observed them teaching? A. Maybe in a few instances, yes, but not every teacher.

Q. All right. Would you say that they are qualified to teach in a predominantly white school of Gould? A. As far as I know.

Q. Do you have any plans to have any of them teach in the predominantly white school at Gould? A. We haven't made any plans to that effect. In fact, we haven't given much thought to the faculty integration because we wanted to get the matter of pupil integration settled before we started that.

Q. Are the Negro teachers paid according to a different salary scale than the white teachers? A. Some difference.

Q. Pardon? A. Yes.

Q. What is the average salary of the Negro teachers in the School District?

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The Court: Now, let's see, are we talking from the twelfth grade down to the first—I mean the average?

Mr. Walker: I think the figures will show, which I have, will show that all teachers are paid just about the same—elementary and high schools—were paid just about the same. Go ahead.

A. The class-room teachers at Fields School I believe the salary this year was $3,870.00 without any extra duties.

Q. $3,870. And what did you pay the white teachers?

A. The base salary for white teachers was $4,050.

Q. $4,050.

The Court: We talked about "averages" a moment ago.

Mr. Walker: That's the base, Your Honor.

The Court: Are they comparable?

Mr. Walker: No, they're not, Your Honor. We will get to that.

Q. (resuming) I show you here data concerning the Gould School district and show you the salary schedules you have for both schools for this year, and ask you to identify it. A. (Witness examines the data) I believe that's correct.

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Q. Now—

The Court: That base salary of "white" with Bachelor's Degree was what?

The Witness: $4,050.00.
The Court: All right.

Q. (Resuming) Now, I ask you is it not true that the range of Negro teacher's salaries is from $3,870.00 to $4,500.00? A. That's right.
Q. And for white teachers the range is from $4,050.00 to $5,580.00? A. That's right.

The Court: Are we talking about class-room teachers?
Mr. Walker: Yes, sir.

Q. (Resuming) Are you aware— A. May I ask if that range for white teachers includes extra duties that they have, such as a Principal of a school being a Coach?

The Court: Does it include a Principal?

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The Witness: We have a man who serves as Principal, who acts as Principal, and is paid a principal fee. It does not carry the title of "Principal" as far as the State Department of Education is concerned because of the fact that he has not a Master's Degree, so we didn't list him as the head teacher.
The Court: Do you have a Coach?
The Witness: We have two Coaches.
Mr. Walker: Well, let's not—
The Court: Let met get this down to strictly "comparable"—the $4500.00 top of the "colored" was classroom teachers?
Mr. Walker: The $4500.00 top was a person who was both a classroom teacher and a coach.

The Court: I see. All right.

Mr. Walker: (Continuing) The top for a classroom teacher with a Master's Degree is $4400.00. That's a person who has a BS degree and is teaching Home Economics. The top salary for a non-administrative person in the white schools is $5400.00, that

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person being a Mr. Billy Ray McGehee, who is the Agriculture teacher.

A. That's right.

Q. (Mr. Walker, resuming examination) Are you aware Mr. Sage, of a lawsuit that was brought against the District in 1949, seeking to have the School District equalize Teachers' salaries? A. I am not aware of it—

Q. Are you aware that the law has long required that salaries for both Negro and white teachers be equal? A. No, I am not.

Q. How do you justify paying white teachers more than you pay the Negro teachers? A. It's simply getting back to that old theory of "supply and demand". We could not get white teachers for the salary that we are paying the Negro teachers—no applications. For the Negro teachers, in the Field School, every year I am swamped with applications. I would get twice as many teachers at that salary if I need them.

Q. I see. But you could not get that number of white teachers? A. I could not.

Q. All right. Do you have any other basis for justifying it? A. That's the only basis.

Q. But you have admitted that you do have two sets of

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salary schedules for Negroes and white— A. I admitted that we pay white teachers some more for the same duties, but realize this, that difference is not nearly so much as it has been in the past. You will notice there's a difference of, I believe it's $180.00 as base salary there—$3870.00 and $4,050.00—which we are paying some of our classroom teachers, $180.00. When I came to Gould the difference was about $600.00. This year—well, last year, '64-'65, that difference had been cut to approximately $500.00, and this year with our increased money from the State Department, under the foundation plan, which was supposed to provide an increase of an average of $500.00 per teacher throughout the State. The Negro teachers received increases amounting to over $500.00 in each case. The white teachers' increase was $270.00, and next year when we will be in the second year of our increased funds from the State Department, the Negro teachers will be raised more like they were this year, so that, in 1966 the salary scale will be equal. We felt it was too much to try to overcome in one year and we are doing it in two steps.

Q. How do you justify paying a person who has been teaching whose got a Bachelor's Degree, who has been teaching in the Negro schools for thirty-five years, a salary of $3870.00, which is the minimum, while at the

—19—

same time you pay a white teacher coming into the System for the first time, with no teaching experience, $4,050.00? A. As I said before, at that salary of $3870.00, it's the question of taking my pick of applications from Negro teachers for that school.

Q. All right. How can you justify— A. (Continuing) At that salary at the white school, I couldn't get one.

Q. All right. Now, what is the number of pupils that the head teacher at the white school has to supervise? A. He supervises the whole school, which is about 365, I would say.

Q. All right. And what is the number of pupils that the Negro principal has to supervise? A. He has approximately five hundred, maybe a few more, but there is this difference—

Q. Let me ask this question—

The Court: Let him finish.

A. Let me tell you this difference, the head teacher acting as Principal at the white school teaches four solid academic classes—Algebra I, Algebra II, Advanced Math, Plane Geometry, in addition to their supervisory duties. The Principal at the Fields School, has no teaching duties.

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Q. How do you justify, however, paying that white teacher—

The Court: What white teacher?

Mr. Walker: The Principal, the head teacher.

Q. (Continuing) —$5,580.00, and the Negro person who is Principal of the Field High School only $5,100.00? A. Well, for two reasons. One is, as I just said, he has many more duties. He teaches in four academic classes in addition to his supervisory duties, and the other is the old theory of supply and demand.

Q. Aren't Principals generally the highest paid persons in the School System? A. That's right.

Q. But in this case the one Negro Principal that you have in the School System receives less than at least one teacher administrator?

The Court: I didn't follow you.

Mr. Walker: In this case, the one Principal in the School System, since there's only one full-time Principal in the School System, receives less money than at least one—and for the record let it be shown that there are at least two people in the white school who make more than the Negro Principal.

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The Court: You say there is only one Principal?

Mr. Walker: That's right. This person who serves as a Principal really isn't a Principal according to Mr. Sage. He is principally a teacher who has some administrative responsibilities.

The Court: I didn't think he said he really wasn't a Principal. Did you say that?

The Witness: No, I said— The one at the Gould School.

Mr. Walker: Yes.

The Witness: He has all the Principal's duties. The only thing we can not refer to him as a Principal on the Report to the State Department of Education. We can not call him a High School Principal because of the Degree.

The Court: Because he hasn't had that Master's Degree.

The Witness: Because he hasn't that Master's Degree.

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Mr. Light: Mr. Walker, for the record, is reading from—

The Court: Well, he is just using that to read his notes, Mr. Light. There's nothing wrong with that. Is that a copy of some official document? If either one of you want to introduce it, you can, but I won't require Mr. Walker to.

Mr. Light: Calling the Court's attention to the fact that Mr. Walker stated for the record that two white teachers are paid more than—

The Court: Well, that statement, as such, will be stricken from the record.

Mr. Walker: All right.

Q. (Mr. Walker, resuming) Mr. Sage, I ask you whether or not Billy Ray McGehee and Charles D. Cheatam and Harry M. Nash are paid salaries which exceed that of Horace I. Dalton, the Negro High School Principal? A. That's correct.

Q. Is there a hot lunch program at the Field School? A. Not at the present.

Q. Have you ever had lunch there? A. Not as fat as I know.

Q. Now is there a hot lunch program at the predomi-

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nantly Gould white High School? A. Yes.

Q. The elementary school pupils can take advantage of that too? A. Yes.

Q. Mr. Sage, is there an Agriculture Building at the white school? A. There is.

Q. Is there such a building at the Negro School? A. Not at the present.

Q. Is there—

The Court: A building?
Mr. Walker: A building.
The Court: A Department.
The Witness: We don't have an Agriculture Department at the Negro School.

Q. (Mr. Walker, resuming) Now, in the Negro School, is there an auditorium? A. There is a combination auditorium and gymnasium.

Q. I'm saying, at the Negro High School, is there an auditorium? A. Yes, there is a place in the central part of the building that can be used for small assemblies.

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Q. About how many people would that hold? A. I don't know. Perhaps the Principal of the school could tell you more about that.

Q. Would two hundred seem like a high figure? A. I would think so.

Q. Now, is there an auditorium at the white high school? A. There is a combination lunch-room and auditorium.

Q. Is there a library at the Negro high school? A. There is a space for a library.

Q. Is there a library at the Negro high school? A. I would say there is a library, yes.

Q. I show you a picture here Mr. Sage, that was taken yesterday, and ask you to identify this picture.

The Court: Are we talking about "Field"?
Mr. Walker: Yes, Your Honor.

Q. Do you recognize that, Mr. Sage? A. Yes.

Q. Isn't that a picture which shows the major part of

the library at the Field High School? A. I don't know if it shows the major part of it because I don't know what books are out, whether—

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Mr. Walker: I would like to have this introduced as Plaintiffs' Exhibit I. It has been marked and I would like to refer to it later.

The Court: It may be received.

(Whereupon, Plaintiffs' Exhibit I, previously marked for identification, is received in evidence and made a part of this record.)

Q. (Mr. Walker, resuming) Now, is there a library at the predominantly white high school? A. Yes, there is.

Q. Do you have a person who superintends that library? A. Yes.

Q. Do you have a person who superintends the library at the Negro high school? A. One of the teachers acts as librarian.

Q. One of the teachers—which one? A. I believe it's the Social Studies Teacher.

Q. Is she paid a special salary for that? A. No.

Q. Is the white teacher paid a special salary for superintending the library? A. The teacher at Gould High School has two periods set aside for the library.

Q. I see. Did you know the approximate number of books that are in the library of the Field High School?

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A. No, I do not.

Q. Would you know the approximate number of books in the white high school? A. I do not know. I would presume somewhere in the neighborhood of a thousand books.

Q. I see. Is there a study-hall in the Negro high school? A. There is a room, we refer to it as an assembly room that I believe is used as a study-hall.—

Q. You believe it is. Is there a study-hall at the white high school? A. (Continuing) I know they have study-hall periods and I assume they have it there.

Q. You don't know though whether they do. A. No.

Q. How long have you been Superintendent of the School District? A. Five years—this is the fifth year.

Q. Now, is there a study-hall at the white high school? A. There is a study-hall in another building from the high school building.

Q. Is there a Science Labtoratory at the Negro school? A. They have Science classrooms—a combination of classroom and laboratory.

Q. Would you tell the Court what kind of facilities you have for a Science laboratory there? A. At which school?

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Q. At the Field School? A. I do not know what facilities they have.

Q. Would you tell the Court what facilities you have at the white high school for a Science laboratory? A. We have a building which was purchased several years ago along with a residence. This building had been used by a man in the barbecue business, a block building, he used that for packaging and preparing of his barbecue meat, and that building is used as a Science laboratory and classroom.

Q. Do you have adequate facilities there for a Science laboratory? A. No.

Q. But are the facilities there more adequate than at the Negro school? A. I would say maybe a little better, but they can't be much better. The facilities in the Gould

high school Science Department is a combination of a teacher's desk and a students' desks and some gas outlets for the furnace.

Q. Do you know whether there is a sealed gas outlet for a furnace for whatever you call it—science, or what have you—at the Science laboratory at the Field high school? A. I presume they do.

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Q. Do you know whether there are any test tubes in the laboratory? A. I do not know what equipment they have.

Q. Have you earmarked any money for use for a laboratory in the Negro school? A. We have earmarked, as such, for that in either school.

Q. So it's up to the discretion of the Principal to determine where the money is used? A. That's right.

Q. Are pupils at the Gould high school required to pay a laboratory fee? A. They are not.

Q. Are Negro pupils at Field high school required to pay a laboratory fee? A. I do not know. Their Principal could probably answer that question.

Q. Mr. Sage, do you know how much per pupil you spend on each Negro pupil who attends Field high school? A. No.

Q. Isn't that amount less than the "per pupil" expenditure on pupils in the Gould high school? A. I expect it would be.

Q. Do Gould high school pupils have to pay an enrollment fee? A. They do not pay an enrollment fee as such—the pupils at enrollment.

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Q. Does it come at high school then? A. No.

Q. All right. Do the Field High school pupils have to

pay an enrollment fee? A. I think maybe they have in the past. They were supposed to discontinue it.

Q. You don't know whether it was discontinued this year or not, do you? A. No.

Q. You assume that it was. Are there any compulsory—

The Court: Why would there be an enrollment fee?

The Witness: I think they use that term to cover "library", "laboratory" and "work book" fees.

The Court: But you had none at the white high school?

The Witness: No, sir.

The Court: Do those people coming in from that other School District pay a tuition fee?

The Witness: The school District pays it for them.

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Q. (Mr. Walker, resuming) Are there any compulsory fund drives in the Gould high school? By that I mean are there any compulsory fund drives that require the pupil to stay out of school in order to raise money? A. No.

Q. (Continuing) To go to work on a special project like picking cotton? A. They have drives in which classes work after school to raise money.

Q. Do you know whether Negro pupils are required to miss days from school in order to pick cotton to raise money for fees—

The Court: Raise money for what?

Mr. Walker: For fees, and for other fund-raising projects?

A. I have been told they have in the past and they were instructed to discontinue that.

Q. Do you know whether that practice has been discontinued? A. (None).

The Court: Now you say they were required to miss school. You don't mean they were required by the school authorities to miss school, do you?

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Mr. Walker: No, I mean, Your Honor, that the School District, or its employees have required pupils to leave school to pick cotton to earn money for the School District.

The Court: You mean to pay these fees?

Mr. Walker: For special fund drives.

The Court: Special fund drives?

The Witness: I don't know what you are talking about.

Q. You don't know anything about that. You don't know whether pupils have been required recently to miss school in order to pick cotton to raise money for the Field School? A. I have been told that, it was rumored—it came in a round-about-way, that they had been, and they were instructed if that has been the practice to discontinue it.

Q. When did you instruct the Principal to do that? A. At the beginning of the school year.

Q. You never instructed him to discontinue that last year or either of the preceding— A. I didn't know they were doing that last year.

Q. You did not know— A. When the information come to me that's when I gave instructions to discontinue it.

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Q. Isn't it true that you have had frequent meetings with a Negro PTA there which brought these kind of problems to your attention?

The Court: Say that again?

Q. Isn't it true that you have had meetings with members of a Negro PTA, the members of which have brought these kind of problems to your attention in the past? A. We have had representatives of that PTA come to me maybe once a year, but that particular problem you mention, that was mentioned by them.

Q. All right. Now, Mr. Sage, let me go back to the physical facilities again. Isn't it true that every pupil who attends Gould high school has an individual desk and chair? A. I believe they do.

The Court: That's "high school" we're talking about.

Mr. Walker: High school.

Q. (Resuming) I show you here a picture of a classroom at the Field High School and ask you to identify that. A. That seems to be a picture of a classroom at Fields.

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Q. Now, I— A. Let me amend my statement about each pupil at Gould high school having individual desks. They have an individual desk or chair. There are several classrooms in which they have a simliar arrangement in this picture here, that is a folding table and folding chair, three on each side sit at the table.

Q. Isn't it true that this is the pattern of all the seats

in the high school, at the Field High School? A. They have some classrooms with individual desks.

Q. But not very many. A. I don't know how the numbers would compare.

Mr. Walker: I would like to have this marked Plaintiffs' Exhibit 2, and introduced into the record.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 2, previously marked for identification, is received in evidence and made a part of this record.)

Q. Mr. Sage, how was the Gould High School heated? A. Each classroom has a heater controlled thermostatically.

Q. Would you describe that as central heating? A. No.

Q. All right. Would you describe the kind of heating that you have at the Negro high school? A. The same as that at the Gould high school. Individual heaters in each room.

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Q. Now, I ask you, isn't it true that you have gas stoves at the Negro Field high school, which are unvented?

The Court: Wait a minute. Gas stoves at the Field high school—

Mr. Walker: Which are unvented.

The Court: Now, what is "unvented"?

Mr. Walker: That means there are no vents there to keep the gas fumes from going out into the classroom.

The Court: You mean you have gas stoves at Fields that do not have vented flues? Is that what you asked?

Mr. Walker: That's right.

The Court: All right.

A. I could not answer that.

Q. You don't know? A. I know the rooms have gas heat. Whether they are vented or not, I don't know.

Q. You would say that the heating at the white school is superior to the heating at the Negro school?

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The Court: He hasn't said that.

A. No, I haven't said that at all.

Q. Would you say that? A. No, I would not.

Q. All right. I show you here a picture of a vent in one of the white schools, and ask if you can identify that? A. Yes.

Q. And that can be controlled by a thermostat on the wall, is that right? A. That's right.

Q. All right. How do the stoves in the Negro school differ from this? A. I am not familiar enough with the stoves in there to say how they differ.

Q. All right. You don't know. A. No. I know each individual room has its own heater.

Q. It's own gas stove—an upright stove? A. I don't know whether it's upright. I know that the main entrance there is suspended to the wall—

Mr. Walker: I would like to have this marked as Plaintiffs' Exhibit 3 and introduced into the record.

Mr. Light: May I see it?

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(Mr. Light examines the marked Exhibit 3)

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit No. 3, previously marked for identification, is received in evidence and made a part of this record.)

Q. Now, I show you this picture of a stove in the Negro school and ask you do you recognize it? A. I don't recognize it, no.

Q. Does this setting in the background look familiar to you as being part of the Field school? A. No, I couldn't identify that as being in the Field school, or a residence, I don't know that.

Q. Now, do you have rest-room facilities within each building at the Gould high school and elementary school? A. That's right.

Q. Now, are those facilities in good repair and are they adequate? A. Yes, they are kept in good repair.

Q. I show you here a picture of a certain facility in the Gould high school and ask you to identify that. A. That seems to be from Gould high school.

The Court: Is that No. 4?

Mr. Walker: No. 4, and I have it marked as Plaintiffs' No. 4, Your Honor. This is a picture of the

bath-room facilities at the Gould High. (Mr. Light examines the exhibit)

The Court: Did you mean to offer it?

Mr. Walker: Yes, I plan to have it offered.

The Court: It may be received.

(Whereupon, Plaintiffs' Exhibit No. 4, previously marked for identification, is received in evidence and made a part of this record.)

Q. Now, would you state to the court again where the bath-room for Negroes at the high school is located? A. It's in a separate building near the high school building.

Q. All right. Would you say that the facilities of the bath-room for Negroes are equal to the facilities of the bath-room for white pupils? A. I would say this, that they have the same fixtures that we have in ours.

Q. That "we have in ours", what do you mean by that? A. That are in the Gould high school.

Q. All right. I show you two pictures here and ask you if this isn't a picture of the bath-room, one side of it, at the Field High school? A. That's right.

Q. And I show you a second picture and ask you if this

isn't a picture of the facility within the bath-room? A. That seems to be, yes.

Mr. Walker: I would like to have these marked Plaintiffs' Exhibit 5 and Plaintiffs' Exhibit 6, and introduce them into the record please.

The Court: Plaintiffs' Exhibits 5 and 6 are received.

(Whereupon, Plaintiffs' Exhibits 5 and 6, previously marked for identification, are received in evidence and made a part of this record.)

Q. Now, this means that in inclement weather Negro pupils who have a need to use the bath-room, are required to come outside and expose themselves to some sickness or possible illness to get to the bath-room, doesn't it? A. I don't think they would be exposed enough to make it a hazard to their health to get the distance of a few feet going to the building.

Q. But, nevertheless, they do have to come out of the building in order to get into— A. Yes, they do have to leave the building.

Q. Right. But pupils in the Gould high school and elementary school don't have to leave the building for anything, do they? A. They do not have to leave the building.

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The Court: What was Exhibit 3?

Mr. Walker: That shows the central heating.

The Court: Oh, yes.

Q. (Mr. Walker, resuming) Now you have a number of courses at the Gould high school, which are not offered at the Field high school, isn't that true? A. We have a number—Number One I think it is.

Q. What do you mean by that? A. We have vocational agriculture that is offered in the Gould high school, that is not offered at Field.

Q. Is that the only course? A. That's, as far as I know, that's the only one.

Q. Don't you offer Journalism at the Gould high school? A. We put Journalism in this year, but not last year.

Q. But you don't offer it at the Field school, do you? A. No.

Q. Do you offer Literature at the Gould school?

The Court: What do you mean? Are you talking about the English course? English courses in Literature?

Mr. Walker: Yes.

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A. Literature is offered as a part of the English course.

Q. Don't you have a special course in Literature? A. We do not.

Q. Do you have Chemistry at the Gould school? A. Yes.

Q. Do you have Chemistry at the Field School? A. We do.

Q. Do you have advanced Chemistry at the Gould school? A. We do not, there is one year of chemistry.

Q. One full year? A. Yes.

Q. Do you have that at the Negro school? A. At the Negro school we have chemistry and biology offered each year. At the Gould school we alternate chemistry and biology each year.

Q. All right. Now, Mr. Sage, do you have a copy of the District's Desegregation Plan with you?

Mr. Light: I can supply one.

Mr. Walker: Generally, for the Court's information, would you relate what that Plan is?

A. Generally that Plan involves a Freedom of Choice for all pupils in all twelve grades, with the one exception that the U.S. Office of Education amended our Plan so as to

not require the full Freedom of Choice in Grades 5, 10, and 11.

Q. You say the Office of Education amended your Plan? A. They suggested that amendment.

Q. The office of Education suggested that you not desegrate Grades 5, 10, and 11 this year?

The Court: I think I know what he means. After he submitted a Plan for all twelve grades, he submitted an amendment to the Plan which they approved.

The Witness: That's right, but the initiative of the bill leaving out the three grades came from the U.S. Office of Education.

The Court: I didn't understand that.

The Witness: Yes.

Mr. Walker: In other words they called you. Do you have anything to show that in the record?

The Witness: I don't know whether—do we have that, Mr. Light? I know it's in the letter?

Mr. Light: The entire assembly delaying your Plan was in some papers I gave you, including the

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letter from the Office of Education.

The Witness: May I see a copy of that then, Mr. Light?

Mr. Light: Sure.

(Counsel and the witness examine the papers in question.)

The Court: Did you first submit the Plan for Grades 1 to 12?

The Witness: That's right.

Mr. Light: By agreement with Mr. Walker, Your Honor, I offer the group of papers, now in Mr. Sage's custody, as Joint Exhibit No. 1 and identify it as the Plan of Desegregation of the Gould School District—

The Court: Let's don't have two Number One's, that just complicates the thing. Just make it Number—Call it Plaintiffs' No. 7.

Mr. Walker: Plaintiffs' No. 7.

The Court: That's right. Unless you have some strong feeling otherwise.

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Mr. Light: None whatever. I just merely want to identify it as the Desegregation Plan, accom-

panied by all of the amendments, letters and so forth.

The Court: All right. I think it ought to be in the record.

(Whereupon Plaintiffs' Exhibit No. 7, constituting a group of documents, amendments, letters, etc., previously marked for identification, is received in evidence and made a part of this record.)

Q. (Mr. Walker, resuming) I would like for you to look at that letter, Mr. Sage, that the Office of Education wrote to you, with regard to Grades 5, 10 and 11, and I ask you isn't it true that the Office did not require you to exempt Grades 5, 10 and 11 from your desegregation plan for this year? A. They gave us the privilege of excluding those three grades from the general Freedom of Choice.

Q. They gave you the privilege, and they did not require that you do that? A. The wording of it, "in grades 5, 10 and 11 in 1965, as many Negro pupils as possible who chose a previously white school will be accepted"—

Q. As many as possible? A. (Continuing) And in 1966 that all grades would be accepted without any exception.

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Mr. Walker: I think that the letter will speak for itself, Your Honor.

Q. (Resuming) Now, you do not include in your desegregation plan for this year grades 5, 10 and 11. Is that right? A. They are included. We have some Negro pupils in each of those grades.

Q. On what basis did you decide to let some Negro pupils into those grades and exclude others generally? A. We

used "proximity to Negro schools". Those who lived nearest to the Negro schools. Some were living across the street or within a block or two blocks of the Negro school.

Q. Isn't it true—

The Court: In proximity to what school?

The Witness: The Field school.

The Court: Now wait a minute. Don't you mean the white school?

Mr. Walker: You mean to the—I'm sorry.

The Court: Predominantly white school?

Mr. Walker: I don't know what he means.

—45—

The Court: What you said was that the ones that lived close to the Field school, you let them go to the other school.

The Witness: The ones that lived closest to the Fields School were the ones that we let go to that school.

The Court: I misunderstood you.

Q. (Mr. Walker, resuming) Now, isn't it true that, of all the Negro pupils who are enrolled in Grades 5, 10 and 11, that those pupils live outside of the Gould School District?

The Court: Mr. Walker, I'm sorry. Say that again?

Q. Isn't it true that all the Negro pupils who were admitted to grades 5, 10 and 11 live outside of the Gould School District? A. I do not know if they all live outside of the Gould School District—

Q. Let me put it this way, don't they all live in Wells Bayou? A. From Wells Bayou? I'm not prepared to say that they all live outside of the District.

Q. Didn't you put a notice, two days before school started, maybe three, on September—I forget the exact date, but the Friday or Saturday preceding the date school started, which stated that grades 5, 10 and 11 would be

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closed to all Negro pupils this year? A. No, we did not.

Q. What did that notice say, Mr. Sage? A. There was a letter sent to the parents of those pupils what we were not accepting them in the Gould high school. Those Negro pupils whom we were accepting in those three grades we did not send a letter to.

Q. Did you not have printed in the newspaper that grades 5, 10 and 11 would be closed this year? A. We did not.

Q. Do you have a copy of the letter that you sent to the Negro parents? A. I do not have one with me, but that letter was sent only to the parents of those whom we were not accepting.

Q. I would like to know now, how again did you determine which ones you would accept and which ones you wouldn't?

The Court: Who made the choice, Mr. Sage?

The Witness: The School Board and I together.

The Court: How many of them are accepted in those three grades?

The Witness: I don't know whether I have to figure or whether Mr. Light has them. We accepted

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one in the fifth grade, nine in the tenth grade and two in the eleventh grade.

The Court: All right, Mr. Walker.

Q. I ask you again, aren't all those pupils from Wells Bayou? A. I do not know that they are all from Wells Bayou.

Q. You don't know where they were from. A. The fact that they lived in Wells Bayou was not one of the factors on which they were accepted.

The Court: What were the factors, Mr. Sage?

A. We looked at it this way—say in the fifth grade, for example, if we had six more that applied than we could have room for, we took the six that lived nearest to Field school to send back to that school. That's the basis we worked on.

Q. But now pupils who live in Wells Bayou live closer to the Field School—

The Court: No, of course they don't. They come in on a bus.

Mr. Walker: The thing is, they might have to pass Field School in order to get to it.

A. (Resuming) All right now, you said once you got up to this overcrowding level, you then started turning Negro

pupils away? A. In those three grades.

Q. In those grades.

The Court: Why were those three grades more crowded than the others—or were they?

The Witness: They were. That was of course during the summer when the projected enrollments, taking the—

The Court: Do you have a bulge in those three grades?

The Witness: A what?

The Court: Do you have a pupil bulge in those three grades?

The Witness: In those three grades the projected enrollment showed more than in any of the other grades, adding the ones that were in the Gould School last year plus the ones who signed up on the Freedom of Choice plan to come to that school.

Q. Isn't it true, Mr. Sage, that Grade 11 at the Negro Field high school is overcrowded? A. I don't know what it is.

Q. Isn't it true that grade ten at the Negro High School

is overcrowded? A. It is not overcrowded in the sense with the number of teachers they have.

Q. No, no, the facilities that they have and of course the number of teachers they have. A. The tenth grade in the Field high school has a larger number than should be assigned to one class, but they haven't enough teachers available with proper distribution that could be made in two sections.

Q. But nonetheless it is overcrowded, isn't it? Isn't it true that the Negro school is grossly overcrowded right now. A. I wouldn't say that it's grossly overcrowded.

Q. Isn't it true that it's overcrowded? A. It's overcrowded to a small degree.

Q. All right. Now you have 350 pupils approximately in the Gould school, that is in the predominantly white schools? A. About 365, I believe.

Q. And you have about 560—did you say—in the predominantly Negro Field School? A. I would have to check, if you would allow me to ask the Principal of the Field School.

The Court: Yes, go ahead and ask him. Off the record, let him ask him. That's off the record.

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(Mr. Walker conferred with the Principal of the Field school off-the-record).

The Court: (On the record) Let's give those figures that you just got Mr. Sage.

The Witness: I would say about 365 at the white school—that's for all twelve grades.

The Court: All right. 365 white and how many Negro?

The Witness: I believe he said 478.

Q. (Mr. Walker, resuming) But, now, isn't it true that for those 365 pupils in the Gould school, you have almost as many teachers as you do for the 478 pupils in the Negro high school? A. We have three more Negro teachers at that school than we have at the white school.

Q. So that the Negro teachers have a far higher pupil-teacher ratio?

The Court: It doesn't appear so.

Mr. Walker: All right. Let's check it.

The Court: It's about a hundred difference.

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Mr. Walker: All right, Your Honor.

Q. You have fourteen white teachers, is that right? A. That figure "fourteen" includes the head teacher and the librarian who did not have a full schedule of classes.

Q. You have fourteen at the white school and seventeen at the Negro school, including the Principal, so you have sixteen teachers at the Negro school since he doesn't teach anything you said? A. That's right.

Q. May I ask your indulgence for a minute, Your Honor. (Mr. Walker referred to his papers) Quick figures show that you have approximately one teacher for every thirty pupils at the Field School, and approximately twenty-six for every teacher at the Gould School.

The Court: What figure are you using?

Mr. Walker: 365 and 478.

The Court: I know, but what are you dividing 365 by?

Mr. Walker: 365 by 14.

The Court: By 14 classroom teachers?

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Mr. Walker: Yes.

The Witness: Now all of those are not classroom teachers. That 14 includes the man who serves as Principal.

Mr. Walker: But he also teaches a full load—

The Witness: It would not be "full".

Mr. Walker: Well, almost a full load.

The Witness: He teaches four classes.

Mr. Walker: How many more would a full teacher teach?

The Witness: In arriving at your figures at the Field school you did not include the Principal.

Mr. Walker: But the Principal doesn't teach anything at all. That would come up with about 14 full teachers.

The Witness: If we did not give our Principal any classes to teach the figures would be about equal, but we do not have enough teachers and had to give him classes to teach.

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Q. (Resuming) All right, Mr. Sage. Aren't the Gould public schools, white for the most part, less crowded than the Field school? A. They are less crowded in some instances and more crowded in some grades—

Q. I am speaking generally, Mr. Sage. A. (Continuing) —some grades in the Field Elementary School. If you include the Elementary School too, some teachers in the Gould School have more pupils than the same grade has in the Field School.

Q. Generally, aren't the Field schools more crowded than—

The Court: Now, does the word "Field" apply to the high school—

Mr. Walker: Both of them.

The Court: All right. Excuse me, Mr. Sage. Go ahead.

A. (Continuing) I would say that in some grades the Gould School is more crowded and in some grades the Field School is more crowded. In some of the grades they have fewer pupils to teach than in the Gould School.

Q. What do you, in the case of overcrowding in a Negro school, do—do you assign those pupils to the white school if the grades which are overcrowded are not overcrowded

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at the white school? A. No, we do not assign them unless they had indicated a preference for that school on the registration sheet we gave out in the Spring.

Q. Mr. Sage, do you have very many pupils who failed to return their preference forms to you? A. Who failed to return them?

Q. Yes. A. I don't know of any who failed to return them. I didn't check on each individual pupil at the Field School that the pupil returned their sheets to the teachers.

Q. Did you send preference forms out to the white pupils? A. Certainly.

Q. All right. Now, then, how many of those failed to return their preference forms? A. I don't think any failed to return them.

Q. You don't know though? A. In fact I know there didn't anybody fail to return them.

Q. So, you got preference forms from every pupil in the School District, to your knowledge. Isn't it true, Mr. Sage, that you and certain of the Board members have obtained an injunction against several civil rights groups in Gould enjoining them from making any protests about conditions in the School System there? A. I do not know the wording of an injunction. The injunctions I assume you are

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referring to are injunctions against mass demonstrations or picketing in the vicinity of the Gould high school.

Q. In the vicinity of the predominantly white school? A. Yes.

Q. All right. Isn't it also true that you have issued orders which forbid the Negro PTA from meeting in the high school—the Negro high school? A. That is right.

Q. What's your reason for that, Mr. Sage? A. The reason for that is, as I understand, the PTA had evolved into largely a protest group against the School Board and the policies of the Board. The members of that organization were the same who planned to demonstrate against the Gould high school and had sent chartered bus loads of people to Little Rock to demonstrate around the Federal Building, who were getting a chartered bus of sympathizers to come to this hearing today and it does not seem right to us to furnish a meeting place for a group of people that is fighting everything we are trying to do for them.

Q. This means that you have in effect held that the Field High School patrons cannot have a PTA organization? A. They can have a PTA but they can meet somewhere else.

Q. Do you know whether any of your employees, mean-

ing the Principal of the Negro School, or anybody else employed by you, discouraged Negro pupils from exercising choices for the Gould high school? A. I don't know of any such method.

Q. All right. I want to go back and ask you what are your specific plans for faculty desegregation?

The Court: Let's take a recess for ten minutes.

(Whereupon, a recess was taken, after which the following proceedings were had in open court:)

The Court: Come around, Mr. Sage.

WHEREUPON, T. RAYMOND SAGE, resumed the witness stand for further examination, as follows:

Direct Examination by Mr. Walker (Cont'd):

Q. Mr. Sage, will you state to the Court whether, in your opinion, Negro pupils are given equal treatment—Negro pupils who attend Field high school are being given equal treatment as the pupils who attend the Gould high school? A. Yes, I think they are.

Q. Do you have any plans for giving them better treat-

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ment? A. In what respect?

Q. Any respect. A. We have plans for providing better facilities for them.

Q. Would you tell the Court about those plans? A. We are going to apply this year—the new Federal Aid to Secondary & Elementary Education, the terms of that Act—we are going to apply for funds for a lunch-room and for a shop and Teacher, and Industrial Arts, which is similar to our shop in the Vocational Agricultural Department. I have talked with officials—spent the afternoon yesterday afternoon—talked with the State Department officials and they have indicated that those requests will be granted. So we intend to do that much immediately—lunch-room and Industrial Arts course would be put in before the end of this year. We intend to build a completely new school, to abandon the Field High school, during the year of 1967.

Q. During the year 1967? A. Yes.

Q. To be open for use in 1968? A. To be open in the Fall of 1967.

Q. To be open in the Fall of 1967? A. We would like to do it sooner, but there are two reasons that we can not.

In orded to do that, of course, we will have to have a bond

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issue. At the present, according to State law, our borrowing power, which is fifteen percent of our assessed valuation, is not sufficient to build a new school. By January of 1967, that borrowing power will have increased by the amount that we have paid off on the indebtedness. In 1966 and '67, it will be increased to a point that we can build. Also we have a bond issue at the present which will be paid off by January 1, 1967. A new bond issue can be made without increasing the millage rate at that time because this bond issue that will be paid off in January '67, has nine mills—

The Court: What is your millage now?

The Witness: Forty-seven, which is well above the average.

A. (Continuing) When that issue is paid off in '67, this nine mills can be transferred to the new bond issue without increasing our millage. We plan to put that on the ballott—school election—in September 1966.

Q. Do you have any other plans? A. Other than building what I have mentioned—lunch-room and industrial arts department and a new high school building—other plans would include taking advantage of the new Federal Aid to Elementary and Secondary Education, as far as personal services to pupils is concerned.

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The Court: What do you call that program?

The Witness: That's Federal Aid to Elementary and Secondary Education.

The Court: Federal Aid to Elementary and Secondary?

The Witness: That's right.

Q. (Mr. Walker, resuming) Let me get this straight. What you plan to do, among other things, is to tear down the Negro high school? A. To tear it down, or if someone wants to buy it and wheel it off—

Q. To dispose of the Negro high school? A. Yes.

Q. And you plan to replace that high school? A. We plan to build a new high school.

Q. All right. Now, you plan to have the same pupils who now attend that high school to continue attending it? A. I don't know whether they will be the same pupils or not. I assume some of the same pupils will be. Our plan of compliance under Freedom of Choice, some who are attending it now I am sure will indicate a desire to come to Gould.

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Q. Do you plan to have that school integrated? A. We plan to follow our plan, which is to give each pupil his choice of attending.

Q. All right. Would you say that the school now is a Negro school? A. The school at the present?

Q. Yes. A. The Field School is all-Negro, yes.

Q. So, that, isn't it probable that if you dispose of that property and replace it with a new facility, that it too will be all-Negro? A. It probably will for those who indicate their choice to go to that school.

Q. Now, get back to your plans for faculty desegregation, what are they? A. We have not made any definite plans for faculty desegregation because we have had so many other things to contend with, problams to be settled,

that we have kept that in the background. We want to get the pupil integration question settled and running as smoothly as possible before we go into something else.

Q. Are your faculty meetings integrated? A. We have not had any up to this point, but we will have at least two this school year, one before the Christmas holidays.

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Q. Do you have any "in-service" work shops? A. We do not have any in-service work shops in the school.

Q. Have you ever had any Principal's meetings? A. We have not had any Principal's meetings because we just have one at each school.

Q. So, that, you haven't had any integrated faculty or staff contact? A. No, but we will have before the year is out.

Q. Isn't it true that you have committed to the Office of Education, that beginning with this term your faculty meetings, Principal's meetings, Teachers' meeting and in-service work shops shall be held on a desegregated basis without regard to race? A. No, it did not say that they all would be. It said that we will have some, which we will have.

The Court: Of course, he doesn't have many Principals, Mr. Walker.

Mr. Walker: But he does have a number of faculty members, Your Honor.

Q. (Mr. Walker, continuing) All right. What plan do you have for using Negro teachers in 1966? A. We do not have any definite plan for using Negro teachers or white teachers. We don't know what vacancies we will have in 1966.

Q. You don't have any plans to generally re-assign

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teachers? A. We do not have any plans to re-assign anybody.

Q. All right. Do you plan to hire teachers next year say, for instance, if a Negro teacher applies to teach in your school system next year without specifying that he wants to teach in the Field High School, will you give him the same consideration for employment at Gould High School as you will, say, a white person who makes an application?

Mr. Light: Your Honor, if I may—Mr. Walker's question consists of the Plan. May I supply a copy to the witness so he can refer to that?

The Court: All right.

(Mr. Light furnished the witness with a copy of the Plan.)

A. (Referring to the document) This Plan says that "During the 1966-'67 school year, the administrative staff of the School District will attempt to employ Negro teachers in a predominantly white school on a limited basis, and particularly in positions that do not involve direct instructions to pupils—

Q. Let me interrupt there if you don't mind. We have made this a part of the record and the Court can see it, of course. Now, I want to know whether you prepared this

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Plan for faculty desegregation? A. I prepared all of this plan.

Q. You prepared this, but nevertheless you don't know what the plan is without referring to it? A. That we

will in '66 and '67 do just what the plan says. We will attempt to employ Negro teachers in predominantly white schools on a limited basis.

Q. I asked the question if you prepared the plan, but you are not familiar with it. A. I am familiar with it in general. I could not recall the plan word-for-word without looking at it. It's eight or ten pages of typewritten material and I wouldn't want to answer something like that without referring to this to be sure that I gave the right answer.

The Court: What page of the plan was that?
Mr. Walker: Page 5, Your Honor.

Q. (Mr. Walker, resuming) Do you have any plans for immediately closing the gap which exists between Negro teacher salaries and white teacher salaries? A. This question was answered earlier. Beginning with the 1966 and '67 school year, the gap will be closed.

Q. You are going to close it? A. Yes.

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Q. There will be one single set of salaries? A. A single salary schedule.

Q. What about for this year, do you have any plans to give the Negro teachers back pay? A. This year's contracts have already been made on the basis of expected income. We could not change this year without disrupting the—

Q. You stated before that you thought Negro teachers on paper were as well qualified as the white teachers. Now in terms of their teaching competence in the Gould District, is it your professional judgment that the Negro teachers are as well prepared to teach in the Gould public schools than the white teachers?

The Court: You asked him that once.

Mr. Walker: I'm leading up to something else, Your Honor.

A. They are as well prepared as far as I know.

Q. They are as well prepared. So, that, when teacher desegregation—when you do begin teacher desegregation, you're not going to have any Negro teachers dismissed, or you are not going to have very many Negro teachers dismissed because of incompetence in case anybody is

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dismissed? A. I can't tell you what we are going to dismiss. We are not going to dismiss anybody except for incompetence.

Q. All right. I want to ask you now, how many Negro teachers in the Field school are incompetent? A. How many are incompetent?

Q. Yes. A. I don't think any of them are.

Q. So, that, all of the people who are now teaching in the school system, once you undertake faculty desegregation, you won't have any problem with dismissals? A. No, we are not anticipating any.

Q. I want to know about this money you plan to get. Now, if you are going to build a Negro high school, it's contingent, isn't it, upon the voters approving a bond issue? A. That's right.

Q. If the voters don't approve a bond issue, what are you going to do? A. We haven't made any alternate plan because we don't have any doubt but that they will approve it. We have talked with people enough to know that they will approve it. In fact, they would like to do it sooner, and the fact that it will not involve a millage increase.

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Q. Let's assume that it doesn't pass, what plans do you have?

Mr. Light: Your Honor, I believe he has answered.

The Court: He has answered that. He said he has made no plans because he is sure it is going to pass.

Q. What plans do you have for offering the pupils now enrolled in the Field High School better facilities than they already have, come January? A. We plan to use funds from the Act that I mentioned several times to provide a lunch-room, and not only the lunch-room, but to provide free lunches for those who can not pay for them.

Q. And that's the extent of it. How much money are you going to get under the Act? A. We qualify for approximately $65,000.00.

Q. How much of that do you plan to use at the Negro school—high school? A. About $50 thousand of it.

Q. At the Negro high school? A. High school and elementary. It would be hard to break it down as to how much to use at the high school. The lunch-room would take a good part of that money—

The Court: He is not interested in that. He's

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interested in the division between the colored and the whites.

A. Well three-fourths of it at least will be used for the Field school.

Q. All right. Now, how much money can you borrow in 1966 when your other money is released? A. You mean in 1967?

Q. Yes, when you have retired your obligation in 1966? A. On the basis of the present assessed valuation of the property of the School District, we would be able to borrow approximately $100,000.

Q. Approximately $100,000. Now, I ask you, as a professional educator, isn't—could that money be better spent for the District by having whatever facilities that you plan to construct, constructed on the premises of the Gould high school, rather than in some other part of the city? A. No, I think it would be much better to build the new facility on the campus of what is now the Field Elementary school for several reasons. In the first place, we do not have room or space available on the campus of Gould to erect such a building. We do have space available on the campus of the Field Elementary school, and if we build this new school on or near the campus of the Gould high school it would be separated by eight or

ten blocks and across a main highway from the elementary school.

Q. Isn't it true that you could purchase property right adjacent to the Gould High School without too much difficulty—isn't there property available that's now being used —. A. I don't know of any property available anywhere near the present Gould high school.

Q. Isn't there farming property right adjacent to the Gould High School?

The Court: What property?

Mr. Walker: Farming.

A. There isn't.

Q. There isn't? A. There isn't any farming property that I know of.

Q. I saw a large field down there the other day, and as far as I could see was clear land. What's that land being used for? A. That land has been bought by an individual and is to be made into lots for building.

Q. But, nevertheless, in case the District were of the mind to, they could have that property condemned—put to public use? A. We could condemn it, yes.

—69—

Q. All right. Now, isn't it true that by building an entirely new high school, you are going to be duplicating facilities that you already have? A. We plan to get much better facilities.

Q. Aren't you going to be unnecessarily duplicating some facilities? A. No.

Q. This means you are going to have two libraries, doesn't it? A. Certainly. We will have one library in each of the high schools.

Q. It means you will have to have two auditoriums, doesn't it? A. That's right.

Mr. Light: May it please the Court, I know what Mr. Walker is getting at and I suggest to the Court that it is not relevant to the issues in this lawsuit. He is getting at the future projected planning of where we are going to locate the school in this District and it's irrelevant to the issues in this lawsuit.

Mr. Walker: Your Honor, I think this is perhaps the most relevant aspect of this whole case.

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The Court: Well, I understand your point Mr. Light. I've already been very liberal in these hearings and have followed very few rules of relevance or evidence. Go ahead, Mr. Walker.

Q. (Mr. Walker, resuming) Now you have an agriculture building already? A. Yes.

Q. This means you have to build a new agriculture building, doesn't it? A. That's right.

Q. Now, couldn't you use the money you are going to use for a new agriculture building on the facility you already have at the white school, and offer better and improved facilities for all the people in the District, rather than just the few over in the Field school? A. No, because I anticipate that some students will choose to go to Field High School, and if we just have the one building on the Gould High school campus, they would have to go clear across town to get to it.

Q. But, then, maybe what I'm getting to—and I will come back to this then—is why is it necessary to have a Freedom of Choice Plan in a District so small? A. I think that that Freedom of Choice Plan is the most liberal plan that we could use and it is far more liberal than in many other schools.

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Q. Do you plan from this point on to run those schools in the District according to the Freedom of Choice?

The Court: Now, we're getting pretty far afield.

Mr. Walker: Well, Your Honor, they're committed to HEW that they are going to have Freedom of Choice for a couple of years. Now—

The Court: The next two years is as far as I'm interested in looking this morning.

Mr. Walker: All right, Your Honor.

Q. (Resuming) All right, back to the site of construction. You already have a cafeteria at the white high school? A. That's right.

Q. This means you have to spend more money to build one at the Negro school, doesn't it? A. That's right.

Q. And the same holds true for all the facilities, which are not adequate, at the white high school. Isn't that true? A. I don't follow you there.

—72—

Q. I mean if you have an adequate science laboratory at the predominantly white high school, this means that you have to spend money to duplicate that facility at the Negro high school? A. The science laboratory today is adequate for the pupils we have there now. It would not be adequate for the total high school population of the District. Neither would our cafeteria.

Q. Now, the same holds true with the Business Department, doesn't it? A. That's right.

Q. This means that you have to spend a lot more money for equipment and for materials for the Negro school in order to just have an equal department with the white school? A. I suppose so. It would take more money to build a new building and equip it.

Q. I want you to identify these pictures for the record. Do you identify that as the front of the Gould high school? A. That's right.

Q. And this is a side view or back view of the Gould high school? A. That's right.

Q. And this is a larger picture of the Negro library, and

—73—

this is a picture of part of the cafeteria of the white school? A. That's right.

Q. And these are parts of the premises of the Negro school? A. I couldn't identify these as to where they were taken.

Mr. Walker: I would like to have these marked Plaintiffs' Exhibits 8, 9, 10 and 11, unless you have some objections.

The Court: Write on the back of them what they are because I won't know.

Mr. Walker: All right. I won't do it now but I'll do it during the lunch hour. I wish to introduce them, Your Honor.

The Court: All right. They are received.

(Whereupon, Plaintiffs' Exhibits Nos. 8, 9, 10 and 11, previously marked for identification, are received in evidence and made a part of this record.)

Mr. Walker: I have no more questions of Mr. Sage.

The Court: All right.

Cross Examination by Mr. Light:

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Q. Mr. Sage, I believe Mr. Walker inquired about your academic training and you mentioned your college degrees. How long have you been in the business of an educator? A. More than I care to admit—since 1924.

Q. Has that all been in Arkansas? A. No.

Q. Would you just very briefly tell what experience you have had in the business of education? A. Since 1924, I have been in the business of education either as classroom teacher, coach, principal or superintendent.

Q. What jobs as superintendents did you have before you came to the Gould School District as superintendent? A. Superintendents?

Q. Yes. A. Superintendent at Mount Holly—

Q. For how many years? A. Two years.

Q. All right? A. (Continuing) At Dermot—

Q. For how many years? A. One year. And at Cotton Plant for eleven years.

Q. All right, sir, and that was all prior to your coming to Gould in your present capacity? A. Yes, sir.

—75—

Q. I wonder if you would describe just very briefly to the Court the nature of your School District, with reference to whether it's agricultural or rural or urban or industrialized? A. Our School District is primarily rural. The prevailing economy, of course, is agriculture.

Q. What agricultural products are principal there? A. Cotton, soy beans and some rice. There is no industry in the School District.

Q. All right, sir, and what is the approximate geographical area of the District? A. Approximately eighty square miles.

Q. Is the town of Gould the only urban incorporated area in the entire District? A. That's right.

Q. And are all of the schools that you have been talking about this morning within the limits of the town of Gould? A. That's right.

Q. Is there any land in the District—any significant amount of land in the District that is not subject to the ad valorem tax from which you get your revenue to run your schools? A. Yes, the Arkansas State Penitentiary, or State Farm, as it's commonly called, lies almost wholly

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within our District and takes about—I would say—twenty thousand acres.

Q. And the District derives no tax revenue from that land, is that correct? A. Correct.

Q. Now, you have made some estimates earlier with respect to the population of the District. I'll hand you an instrument and ask you whether that is some data prepared by you, at my request, from the records of the Gould School District? A. That is right.

Q. All right, sir. Will you please refer to that and tell me what the appproximate total population of the Gould School District is?

The Court: Are you going to introduce that directly?

Mr. Light: Yes, sir, I intend to.

A. Estimated at three thousand.

The Court: The total population?

Mr. Light: That's the total population, not the school population.

The Court: The total population. Both adults and

—77—

children of the District?

Mr. Light: Yes, sir.

The Court: All right.

Q. (Mr. Light, resuming) Now, of that three thousand, approximately how many are white and how many are Negro? A. I would say an estimated eighteen hundred Negro and twelve hundred white.

Q. Now, do you have recorded on that instrument the enrollment of the schools for September 1965, and if so, would you state the enrollment of the schools that are attended exclusively by Negroes? A. September there were five hundred and nine.

Q. And how many Negro students did you have in Sep-

tember in the previously all-white school? A. Seventy-one.

Q. And how many white students did you have enrolled in September? A. Two hundred and ninety-nine.

Q. All right. In other words, your school population, the students in your schools, there are approximately two Negroes for each white? A. That's approximate.

Q. All right, sir. Now does that instrument that I just

—78—

handed you, and which I'll now mark for identification—

The Court: Defendants' Exhibit No. 1.

Q. (Continuing) Defendants' Exhibit No. 1, does that also contain a schedule of the District's bonded obligations with reference to prior bond issues? A. That's right.

Q. And is that accurate? A. That's accurate as far as I could get from our books.

Mr. Light: Your Honor, now that is the only information other than what he has already testified to, and I offer this in evidence as Defendants' Exhibit No. 1.

The Court: It may be received.

(Whereupon, Defendants' Exhibit No. 1, previously marked for identification, is received in evidence and made a part of this record.)

Mr. Light: I'll hand Mr. Walker a copy of it.

Q. (Continuing) What is the approximate budget of the Gould School District for the 1965-'66 school year? A. Our anticipated income is approximately $225,000.

Q. And is that included from all sources? A. From all sources.

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Q. Approximately how much of that is derived from ad valorem taxes? A. Approximately sixty thousand dollars.

Q. And approximately how much from State minimum foundation aid?

The Court: "Minimum" what?

A. Minimum Foundation program.

Mr. Light: That's the principal State aid, Your Honor, to—

The Court: That's what they call the State Program?

Mr. Light: Yes, sir.

The Court: All right.

A. Approximately $132,000.

Q. And do you also project some income in the form of State aid for transportation to support your bus program? A. Yes, that's approximately $14,000.

Q. All right, and do you also have some projected income from tuition (At this point Mr. Walker conferred with Mr. Light off the record) Mr. Walker has kindly consented to stipulate these figures, but this is the last one, so I'll go

—80—

ahead and inquire about it. To shorten this, do you have sixty-six students in September from the Wells Bayou District on a tuition basis? A. That's right.

Q. And is your agreement with that District an annual payment of $114.00 per student for each one you take? A. It is this year.

Q. So that would project an income of approximately $7500 from the tuition students. Very well. Now with regard to the physical facilities in the District when was the

building that is now used as the Gould Elementary school constructed? A. I believe in 1947.

Q. Was it constructed at that time for use as an elementary building? A. No, it was built for use of the high school building.

Q. And subsequent to that time it has been converted and is used as an elementary building? A. That's right.

Q. Can you tell the Court the approximate cost of construction of that building? A. I would have to refer to the bond issue for that, but I believe—I thought it was the bond issue of 1947.

The Court: $81,950.00?

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The Witness: That's right.

Mr. Light: That's correct.

Q. (Continuing) That was the purpose of that bond issue, to construct that building, is that correct? A. That is correct.

Q. Now, is there a facility in that building, the elementary school, that is now used by high school students? A. Yes, one room of this building formerly was the auditorium.

Q. The high school students use it now for what purpose? A. The high school pupils now use that as a study-hall and library.

Q. And is that room that's used by the high school students near to or far from the high school building where the high school students carry on their other activities? A. It's on the opposite end of the building from the high school building.

Q. Does this require the high school students to walk

all the way through the elementary school to get to this—A. They have to walk all the way through the elementary building, or go around outside.

Q. Now, is that a desirable situation? A. It's very undesirable and we've been told of it by the State Department—

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Q. All right, now you mentioned that the Gould high school was built in 1964. Is that correct? A. That's right.

Q. Where were the funds obtained for that purpose? A. The bulk of the funds was obtained from insurance proceeds from the fire which destroyed the building which had been used as an elementary building.

Q. Do you recall the amount of proceeds available from the insurance? A. For replacement of the building, approximately between $98 and $99 thousand dollars.

Q. And those proceeds were all consumed for the purpose of constructing this new high school building, is that correct? A. Correct.

Q. There is an allegation in the complaint that this is an airconditioned building. Is that true? A. There is one room in this new building which is airconditioned, that is the combination lunch-room and auditorium, which is called a cafitorium.

Q. All right. There is also an allegation with respect to central heating, and Plaintiffs' Exhibit No. 3 shows a register near the bottom of the floor in what appears to be a classroom, and Mr. Walker has marked on the back "central-heat". Is there a central heating system in that

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building? A. There is not a central heating system in that building any where.

Q. Is there a central heating system in any building belonging to the School System? A. There is not.

Q. Do you know the purpose of that register? Is it a circulation register, or what? A. I think that register is for return for income and outgo of air for the furnace.

Q. You have reference now to Plaintiffs' Exhibit No. 3? A. Correct.

Q. Are the laboratory and science facilities in the Gould high school—or near the Gould high school—in a separate building, adequate? A. No, they are not adequate.

Q. I don't know to what extent you described them earlier, would you very briefly say what they amount to? A. I'll tell you what building this was in, which was formerly used as a part of a barbecue business, and the changes that were put in that building to make it a science laboratory were a combination teacher's desk and demonstration desk, equipped with gas burners, and that is about the only thing we put in the building.

Q. You mentioned earlier that the building was obtained

from the previous Japanese relocation camp at Roher in 1949. Were those buildings obtained for use on both the Field campus and the Gould school campus? A. Yes.

Q. Is there a gymnasium on the campus where the Gould high school and Gould Elementary school is located? A. Yes, there is a frame building.

Q. I hand you Exhibits 2 and 3 and ask you if those are the front and side of the gymnasium? A. (Examining exhibits) This is a picture of the gymnasium.

Q. You have identified Defendants' Exhibit 3 as a picture of the gymnasium. Would you tell me what Defendants' Exhibit 2 is a picture of? A. That's the vocational agriculture building.

Mr. Light: Your Honor, I offer these into evidence.

The Court: They may be received, but before you leave write on the back what they are.

Mr. Light: Yes, sir.

(Whereupon, Defendants' Exhibits 2 and 3, previously marked for identification, are received in evidence and made a part of this record.)

Q. Are there shower facilities in the gymnasium building, that we have just referred to? A. Yes, there are

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shower facilities on one side of the gymnasium that we use as a boys' dressing room with shower facilities, and on the other side the girls' dressing room there is a—you might call it shower facilities, but I don't believe there's a shower head on—

Q. Well, I hand you what's been marked Defendants' Exhibit 6 for identification and ask you if that's a picture of the so-called shower facility for girls? A. That is right.

Q. And I hand you what has been marked Defendants' Exhibit 5 and ask you if that is a picture of some of the shower facilities in that building? A. That's right.

Q. Are these dressing rooms—the boys and girls dressing rooms—"long-like" affairs located under the permanent seats in the gymnasium? A. That's right.

Q. All right. I hand you what has been marked Defendants' Exhibit 4 and ask you if that's another picture of the dressing rooms in that building? A. That's right.

Mr. Light: I offer these in evidence, Your Honor.

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The Court: They may be received.

(Whereupon, Defendants' Exhibits 4, 5 and 6, previously marked for identification, are re-

ceived in evidence and made a part of this record.)

Q. Are there bath-room facilities, as Mr. Walker says, or toilet facilities, located in that building? A. They are very inadequate. There's one commode on each side, one in each dressing room.

Q. I hand you what I have marked as Defendants' Exhibits 7 and 8 and ask you if those are pictures of the toilet facilities located in the gymnasium building of the Gould high school? A. That's right.

Q. That's a picture of each of the two toilet facilities, is that correct? A. That's right.

Mr. Light: I offer those in evidence, Your Honor.
The Court: They may be received.

(Whereupon, Defendants' Exhibits 7 and 8, previously marked for identification, are received in evidence and made a part of this record.)

Q. Now, with respect to the vocational agricultural

building on the Gould high school campus, I'll ask you if Defendants' 9 is a picture showing the facilities in that building? A. That's correct.

Q. Does Defendants' Exhibit No. 9 portray substantially all the facilities in that building? A. Yes, sir.

Mr. Light: I offer that, Your Honor.
The Court: It may be received.

(Whereupon Defendants' Exhibit 9, previously marked for identification, is received in evidence and made a part of this record.)

Q. Mr. Sage, the vocational agricultural building at the Field high school has been mentioned—strike that please—The Home-Ec. building I believe is referred to. Is that a facility at the Field high school that is located in a separate building from the principal building? A. That's right.

Q. What type of equipment and teaching aids are available in that? A. We have approximately the same type of equipment and teaching aids that we do in the Gould high school, each is in a separate building, each was a remodeled

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building from the prisoner-of-War camp, they are equipped with the usually accepted equipment of a Home-Economics Department, such as stoves, sewing-machines and so on.

Q. And are those stoves and other facilities you have mentioned, reasonably modern facilities? A. Yes.

Q. At least of equal degree of those available to a school, is that correct? A. That's right.

Q. I hand you what I've marked Defendants' Exhibit No. 11, and ask you if that is a picture of the building containing the Home-Ec. facility at Field high school? A. That's right.

Q. I hand you what I've marked Defendants' Exhibit 12, and ask you if that's a picture of a room in the interior of that building? A. That's right.

Q. What is that room? A. That would be the sewing room I believe.

Q. I hand you what I've marked as Defendants' Exhibit 13 and ask you if that's also a picture of a room in that building? A. Yes.

Mr. Light: I offer those, Your Honor, in evidence.

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The Court: They may be received.

(Whereupon, Defendants' Exhibits 11, 12, and 13, previously marked for identification, are received in evidence and made a part of this record.)

Q. I hand you what has been marked Defendants' Exhibit 10 and ask you what that is—is that a picture of the front of the Field high school? A. Yes, that is right.

Mr. Light: I offer that also, Your Honor.
The Court: It may be received.

(Whereupon, Defendants' Exhibit 10, previously marked for identification, is received in evidence and made a part of this record.)

Q. Mr. Sage, can you tell the Court how much was spent last year on the library at Field high school, and how much was spent by the District on the library at Gould high school? A. I don't know exactly, somewhere in the neighborhood of $300 at each school.

Q. Approximately the same amount? A. Approximately the same amount.

Q. Have you been to the Field high school recently, and

are you familiar with the appearance of the library there? A. Yes.

Q. I'll ask you if that photograph that I'm marking Defendants' Exhibit 14 is a picture of a portion of the library at the Field high school? A. That's right.

Q. And I'll ask you if the pictures I've marked Defendants' 15 and 16 are additional books belonging to the library, located in the Principal's office? A. That is right.

Q. Do you happen to know, Mr. Sage, why the Principal

keeps the books pictured in Defendants' 15 and 16 in his office instead of out in the library? A. The only reason I would venture is—

Q. If you don't know, don't say. A. I don't know.

Q. All right. I'll offer those, Your Honor.

The Court: They will be received.

(Whereupon, Defendants' Exhibits 14, 15 and 16, previously marked for identification, are received in evidence and made a part of this record.)

Q. What is the most modern physical facility you have in the Gould School District? A. The most modern, the

newest, is the Gould high school, the latest one to be built.

Q. All right. When was the Field Elementary school started? A. The Field Elementary school? That was started before I became Superintendent at Gould, somewhere in the mid nineteen-fifties—is that right?

Q. Do you have any papers with you that would reflect that information? A. I don't believe I do.

Q. To refresh your recollection, didn't I hand you back some papers you prepared for my use this morning?

(The witness is looking through papers)

Is the instrument you are now referring to a summary that you prepared from the records of the District and supplied to me at my request? A. That's right.

Q. Would you please refer to it with reference to the Field Elementary school, and tell the Court when that building was constructed? A. The bond issue was April 1, 1954.

Q. In what amount? A. $45,700.

Q. Have additional sums been devoted to that school plan since that time? A. January 1, 1960, $82,400 for a gymnasium and auditorium.

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Q. And has there been any subsequent additions? A. In the Summer of 1965 two additional classrooms.

Q. In what amount? A. $9,787.00.

Q. So, the cost of that facility is approximately $138,000 if my mathematics is correct. Is that rights, Mr. Sage? A. That's right.

The Court: What did this $60 thousand in '64 go to?

Mr. Light: In 1964?

The Court: Did he say '64?

The Witness: In 1954, $45,700.

The Court: And the other figure was 1960?

The Witness: That's right, 1960, $82,400.

The Court: All right.

Mr. Light: And, again in 1965, Your Honor, $9700.00.

The Court: 1965?

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The Witness: $9,787.00.

Q. So, in terms of cost, that plant is the most expensive plant that you have in the System. Is it not?

The Court: Now, we're talking about what, the elementary school?

Mr. Light: The Field Elementary school attended exclusively at the present by Negroes, Your Honor.

The Court: Does he have a total for that?

Mr. Light: Your Honor, I've added it up—$137,887.00.

The Court: All right.

Q. (Mr. Light, resuming) Is that facility, the Field Elementary School, modern and satisfactory in every respect from an educational viewpoint? A. It's completely satisfactory.

Q. I hand you a group of pictures marked Defendants' Exhibits 17 through Defendants' 22, and ask you if those are photographs taken of various views of the interior and the exterior of the Field Elementary school plan? A. (Examining exhibits) Yes, those are all the Field Elementary School.

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Mr. Walker: Just a moment. I would like to interpose one objection to one of these.

The Court: Let's let him identify them by number first. Are you going to identify them or offer them?

Mr. Light: Yes, Your Honor, I offer Defendants' Exhibits 17 thru 22 in evidence.

The Court: Are they identified now?

Mr. Walker: Yes, they're identified as being part of the elementary school.

The Court: I know, but I mean do they have a number on the back?

Mr. Walker: Yes, this is Defendants' Exhibit No. 18.

The Court: All right.

Mr. Walker: Now Defendants' Exhibit No. 18 is a photograph which shows a part—a portion—of

the gymnasium, and the gymnasium is a part of the high school facility even though it's attached to the

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elementary school. With that statement, I would like to—

The Witness: I would like to add that that is used by elementary pupils too.

The Court: With that explanation and qualification, they will all be received.

The Witness: It's not restricted to high school students.

(Whereupon, Defendants' Exhibits 17 through 22, previously marked for identification, are marked for identification, are received in evidence and made a part of this record.)

Q. (Mr. Light, resuming) When the new high school that you propose to build within the next eighteen months or two years is constructed, will the gymnasium, a view of which is shown in Defendants' Exhibit 18, be for the use of both the high school and the elementary students? A. It will be.

Q. Is the gymnasium at the Gould high school used by both the elementary and the high school students? A. Yes.

Q. I show you what has been marked Defendants' Exhibit 23 and ask you if that's a picture of some of the showers located in the Field Elementary School gymnasium? A.

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That's right.

Mr. Light: I offer that in evidence, Your Honor.

The Court: It will be received.

(Whereupon, Defendants' Exhibit No. 23, previously marked for identification, is received in evidence and made a part of this record.)

Q. Now, there was some question, Mr. Sage, about a bond issue, or vote of the people, in connection with building the new Field high school. Is it true that if the School Board levies the same tax that it did last year in Arkansas, and the people defeat that, the tax continues at the same level as last year? A. That's right.

Q. All right. So, there's no question about the availability of this nine mills that's going to be "freed-up", so to speak, in January 1967? A. That's right.

Q. When do you plan to make application for the Federal funds for the purpose of building a lunch-room or cafeteria facility and vocational-agricultural building on the Field campus? A. Within the next ten days.

Q. Have you assurances from the appropriate Federal and State officials, that that application will be favorably

acted upon? A. I have.

Q. Where is your largest facility, landwise? Do you have a larger campus at the Gould high school and Elementary school campus, or at the Field Elementary School campus? A. We have more available space at the campus at the Field School.

Q. Is Journalism an elective course at the Gould high school? A. That's right.

Q. In other words, it's not required of all students? A. That's right.

Q. How do you determine what elective courses you will offer at any school, at the high school level? A. All stu-

dents are required to take certain subjects for four years—English, American History and other subjects are elective.

Q. Do you give any consideration as to whether or not you have a command or request from the students at a particular school, for a particular course, in determining whether an elective course would be offered? A. That's right.

Q. Did you have such a demand for Journalism at Gould? A. We had a demand for that because of the training we give the students in putting out what we call the "school

paper" and the "school Year Book".

Q. Do you have any knowledge of any demand or request for Journalism at the Field high school? A. That subject has never been mentioned. They never asked for it.

Q. I hand you what has been marked Defendants' Exhibit 24 and ask if that's a list of all of the professional personnel employed by the Gould School District? A. That's right.

Q. Let Mr. Walker examine it. Does that reflect the professional, or academic degrees, of each of those persons? A. Yes, sir, it does.

Mr. Light: I offer that in evidence, Your Honor.
The Court: It may be received.

(Whereupon, Defendants' Exhibit 24, previously marked for identification, is received in evidence and made a part of this record.)

Q. Just in brief summary, Mr. Sage, does it show that you have two teachers at the Field High school with Master's Degrees and fifteen with Bachelor's Degrees? A. That's right.

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Q. Does it show that you have only one teacher at Gould high school with a Master's Degree? A. That's right.

Q. And you have a teacher at the Gould high school deficient in education hours that has only a temporary certificate? A. That's right.

Q. Does it show that you have still another teacher at the Gould high school who has not got a certificate? A. That's right.

Q. Based on that, which school is better staffed with respect to academic credentials alone? A. The Field Elementary and High School.

Q. Now, I wonder if you would refer to the papers you were looking at earlier and tell the Court how many Negro students were rejected—that is, whose applications or preferences to attend the Gould high school and Gould Elementary school were denied in each of the fifth, tenth and eleventh grades? A. In the fifth grade there were six.

Q. The tenth grade? A. The tenth grade twelve and the eleventh grade ten.

Q. And in those three grades how many of the Negro students' preferences were granted and were thereby admitted to the Gould school? A. Fifth grade one; tenth

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grade nine; eleventh grade two.

Q. That's nine in the tenth grade? A. That's right.

Q. All right. Now would you refer to your records and tell the Court how many white students from the Wells Bayou School District are attending Gould high school, and in what grades? Let me limit that to start with, you don't have any Wells Bayou students below the ninth grade,

do you? A. That's right. They have their school for the first eight grades.

Q. And that is true with respect to both Negroes and whites? A. Yes.

Q. Very well. Now with respect to the white students from Wells Bayou, how many and in what grades? A. One in the ninth grade and none in the tenth grade, four in the eleventh and one in the twelfth.

Q. Would you give the Court the same information with respect to the Negro students in the Wells Bayou School District who are attending the Gould high school? A. Ninth grade two; tenth grade two; eleventh grade two; twelfth grade none.

Q. Now this means, with respect to your overcrowded grades, which are ten and eleven only at the high school,

that you have only two Negro students—correction, only four Negro students and four white students from Wells Bayou School District attending those overcrowded grades? A. That's right.

Q. Mr. Walker, I believe, asked you if it was not true that all of the Negro students in the overcrowded grades were from the Wells Bayou School District. I'll ask you if by referring to the fact that you have nine Negro students in the tenth grade at Gould high school, and only two Negro students at that level from Wells Bayou, if it isn't true that seven of the Negro students in Gould High school are resident students—residents of the District? A. That's right.

The Court: Let's take a recess. I see you are not through.

Mr. Light: I won't be much longer, Your Honor.

The Court: Yes, but Mr. Walker is not through. We will adjourn until one-thirty.

(Whereupon, at twelve o'clock noon a recess was taken until one-thirty p.m.)

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AFTERNOON SESSION

Pursuant to adjournment at twelve o'clock noon, the hearing reconvened at one-thirty p.m., and the following proceedings were had in open court in the presence of all parties:

The Court: Come around Mr. Sage.

WHEREUPON, Mr. T. Raymond Sage resumed the witness stand for further examination as follows:

Cross Examination (Cont'd) by Mr. Light:

Q. Mr. Sage, I believe I understood you to say that you have sixty Negro students and six white students, total, from the Wells Bayou School District. Is that correct? A. That's right.

Q. Was the Freedom of Choice Plan—

The Court: Say that again please, Mr. Light.

Mr. Light: I asked whether he had a total of sixty Negro students and six white students from the Wells Bayou School District this year.

The Court: All right.

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Q. (Continuing) Was the Freedom of Choice Plan applied by the Board in the same fashion to those students as it was to the resident students? A. Just exactly in the same manner.

Q. All right. Could the School District operate during this current school year if for any reason it were deprived of that tuition revenue paid by the Wells Bayou School District? A. I don't believe we could because that tuition would amount to approximately $7000.00.

Q. All right. You mentioned your budget for this year to be an expected revenue of about $225,000, I believe. How much are your projected expenditures in that budget? A. All but about $4,000.00 of that $225,000.00.

Q. All right. How much surplus or balance did you wind up with at the end of the 1964-'65 school year? A. Approximately $1200.00.

Q. $1200.00 out of a $225,000.00 budget. Is that typical of the sort of surplus you've been winding up with?

The Court: It's typical of a good many school districts.

Q. All right, I'll ask you— A. I would say this, that each year for the past five or six years we have spent more than we have taken in.

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Q. All right. We started this school year with about a $1200.00 balance from last year. Is that correct? A. That's correct.

Q. If, for some reason, you wanted to employ an additional teacher in your District at this time for the remainder of this school year, are there any proceeds to pay a teacher's salary? A. Not any.

Q. This cotton-picking situation has been mentioned, Mr. Sage, would you tell the Court what you know about the cotton-picking situation? A. As long as I can remember, it has been the custom at each school, the Gould as well as the Field School, for different classes to have fund-

raising projects to buy something for the use of the class, and they have money-raising activities for those purposes and I assume that this cotton-picking is one of the ways that the students at the Field high used to raise money for their classes.

Q. Is that a type of project—that is cotton-picking—that has been employed by the students at the Gould high school? A. Yes.

Q. Do they do that during school hours or on Saturdays and after school? A. On Saturdays and after school.

Q. Are there other similar projects some classes use instead of cotton-picking for money? A. Yes, car-washes.

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Q. Let me ask you this, is this a voluntary program whenever a class wants to do it or is it mandatory? A. It's voluntary.

Q. All right, sir. Does the Gould School District engage in transporting students to and from school in buses? A. Yes.

Q. How many buses do you have? A. Seven buses.

Q. Are the buses run presently, during this school, on a segregated or desegregated basis? A. They are run on a desegregated basis.

Q. In the Gould high school, do you have an athletic program? A. Yes, we do.

Q. Do you have a foot-ball program? A. Foot-ball.

Q. And a basket-ball program? A. That's right.

Q. Are any of the Negro students now attending the Gould high school participants in those programs? A. Yes, in the foot-ball program there were eight Negro boys that came out at the start of the Season practice for the team and some of them dropped out and one stayed through until about the last two weeks of the Season.

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Q. And he played and participated? A. He played in every game during the time that he was in school.

Q. And that was foot-ball? A. That was foot-ball. We have several—I don't know the exact number—we have four or five out of a total of ten or twelve boys that went out for basket-ball.

Q. Mr. Sage, as I understand it you have approximately seventy-one Negro students in the Gould high school—in the Gould schools—attending with approximately 299 or 300 white students, one in five approximately. That's the first time there has ever been any desegregation in this School District, is that correct? A. Yes, sir.

Q. With that substantial number of Negro students have you had any difficulty whatever? A. None whatsoever.

Q. Are some of the Negro students who are attending Gould High School and Elementary School, if this applies to the Elementary school, on the honor roll? A. There are several in each class.

Q. These students apparently were sufficiently prepared from their education they received in the Field School to excel academically in the Gould High School? A. That's right. They couldn't have made the honor roll attending

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here for the first time, unless they had adequate preparation before that.

Q. "Average daily attendance" is a term that, as an Educator, you frequently deal with, is it not? A. Yes.

Q. Is that a calculation you must make and report monthly to the State Department of Education and upon which the amount of State aid that is paid you, is calculated? A. That's right.

Q. Is the average daily attendance, as compared to the number of students enrolled, any different in the Field High School as compared to the Gould High School? A. I would say that the average daily attendance in the Field High School, the percentage is small.

Q. In other words, the attendance record of the Negro students in the Field High School would be somewhat less perfect than that in the other school? A. That's right.

Q. Does that then affect your practical and significant pupil-teacher ratio in the Field High School? A. It affects it a great deal. If a teacher has forty students on the roll and wouldn't average but thirty coming to school each day, it obviously lightens her roll.

Q. All right, sir. With respect to the PTA using the meeting room at the Field School, had the PTA group, prior to the time that they are privileged to use that facility

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for meeting, been using it for PTA purposes, Mr. Sage? A. They might have used it partially for PTA purposes but our understanding of it was that it was more political than PTA.

Q. Is that the reason the Board directed you to terminate that? A. That's right.

Q. Do you permit the use of any of the other property belonging to the Gould School District for other political rallies and purposes? A. None.

Q. In the formulation of the desegregation plan under which the District is now working, did you sit with, and confer with the Board while that Plan was being evolved and formulated? A. Yes, every meeting—the Board meetings and the Superintendents.

Q. Did you participate in the discussion and hear the discussion of members of the Board? A. Certainly.

Q. Can you tell the Court what the purpose or objective of the Board was in adopting and formulating that Plan? A. The objective was, first, to formulate a Plan that would be acceptable by the Department of Health, Education and Welfare, one that would work in our situation, and that

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was the Main item with which we were concerned. At that time, there were racial disturbances in other towns both in Arkansas and out of State and we wanted to avoid, as much as possible, anything like that happening in Gould. We wanted to set up if we could what we would call, you might say a model plan, one that other schools could pattern after.

Q. Mr. Sage, at the time the Board had under discussion the prospective plan, and was evolving it, were you and the Board aware that the Department of Health, Education and Welfare had published guidelines indicating they were approving plans in Arkansas taking as long as three years to complete desegregation? A. Yes, there were many schools doing that.

Q. Why did your Board elect to segregate all grades in one year in light of that? A. We did that because we thought that it would make for a smoother transition, that if we put it off and said "now let's take certain grades this year and some more next year and some more the year after that" that there might be strife, and agitation concerning that. We wanted to work this in good faith and give every student in the twelve grades a freedom of choice.

Q. In the light of the facility that you actually have available down there at Gould and the limitations on your

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financial resources, are you and the Board now undertaking

to afford every child in the District as nearly an equal educational opportunity as possible? A. We certainly are.

Mr. Light: Your witness.

Redirect Examination by Mr. Walker:

Q. Mr. Sage, you testified that one teacher who teaches in the Gould High School has a temporary certificate but is deficient in education hours? A. That's right.

Q. Is that person's name Mary Sue Halter? A. That's right. She is not in Gould High School, She is in Gould Elementary School.

Q. All right, sir. Now, what is her teaching experience? A. I don't know the exact number of years. I would say approximately five years because she taught back before I came to Gould and she taught since I have been here too.

Q. How can you justify, Mr. Sage, paying her more money than you pay any single Negro teacher in the System? A. We had arrived in the weeks before school was to start and we did not have a teacher for that grade, and no prospect of one. She had taught that grade with experience. In the past she had shown herself to be an excellent

teacher and so we just asked her what it would take to get her to come to teach.

Q. And you gave her what it would take. At the same time didn't you have lots of applications from Negro teachers who wanted to teach in the Gould School District there? A. Not for the Gould Elementary school.

Q. But just for the Gould Public School System, didn't you? A. Every application I get—I believe this is right—has been specifically for either the Gould School or the Field School.

Mr. Light: Your Honor, if I may interject this, there would be no point in pursuing that since the Board does not purport to desegregeate the teaching staff this year.

The Court: I understand. And after all, he has twice given his explanation, whether it's a good one or a bad one, the law of supply and demand.

Mr. Walker: It's a matter here of money and the District chose to divert $800 at least from—well, to use $800 that could have been used on the Negro school, which certainly needed it, to provide a teacher for the white school. I think that's the point I'm

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trying to make more than anything else.

The Court: All right.

Q. (Mr. Walker, resuming) All right, let's go to other things. You have testified that the Home-Economics Department at the Gould School and the one at the Field School were about the same, didn't you? A. Yes.

Q. And you have already identified Defendants' Exhibits 13, 11 and 12. Do you recognize them? A. Yes, that's right.

Q. Now I ask you with regard to the materials and the equipment within the Home-Economics Department of the Gould High School, what was the source, how did those things come to be there? A. The equipment?

Q. The equipment and materials and the furniture? A. It was furnished by the School Board.

Q. It was furnished by the School Board. All of that was furnished by the School Board. A. The equipment, such as sewing machines, were. Now a large part you might

say the interior decoration, was done by the teacher and her pupils. They actually got down and worked at such jobs as sanding the floor.

Q. They didn't buy any of the equipment or anything

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like that? A. They did not.

Q. Now, I ask you what is your response, what would you say if I tell you that the Negro pupils and their parents raised money through fund-raising drives to furnish and equip the Homes Economic Building there at the Negro High school? A. If they done it, I don't know that they have.

Q. Do you have a break-down of expenditures by the District for that Home-Economics program? A. I don't have it available.

Q. Do you know whether or not the living-room set that you have in that school was purchased by the students? A. I don't know how it was purchased because it was there when I came to Gould.

Q. Do you know whether the carpet that's on the floor, the rug that's on the floor, was purchased by the students? A. It was not purchased by the students. I believe there was linoleum on the floor.

Q. You're right. It was not purchased by the students. Do you know that of your own personal knowledge? A. I don't know for a fact without going back into the records to see.

Q. All right. Do you know whether the books in the library, or at least two sets of encyclopedias in the library, were purchased by the students with money they raised?

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A. I know some were purchased by students, or by the school as a result of solicitations of the citizens in town.

Q. But nevertheless the students were the ones who made the solicitation. They raised the money to buy their own books for their library? A. Partially.

Q. Do you know whether any of these students were required during school times by any person at that school, the Field school, to leave class en masse and go pick cotton to raise money for school programs? A. I do not know that.

Q. Can you deny that it took place? A. I can't deny it because I don't know one way or the other whether they were or not.

Q. Now, Mr. Light has asked you about the athletic program and you stated you have a foot-ball and a basket-ball team. Do you have a track team there or a track program at the white school? A. Yes.

Q. What other programs, extra-curricular, do you have there? A. We have the two vocational clubs, that is the FFA, the Future Farmers of America, and the FHA, the Future Homemakers of America.

Q. All right, do you have those same clubs at the Negro school? A. Yes, they do not have the FFA, no, because

they do not have an agricultural department.

Q. Now, do they have a foot-ball program at the Negro high school? A. No.

Q. But you have more Negro students in the high school than you do at the white school? A. That's right.

Q. Do you have a track program at the Negro school? A. I don't know for sure. It seems like the Coach mentioned that they were working out in track, but I don't know whether they attend track meets with other schools, or

not. They probably have that in connection with their physical education program.

Q. Now, in order for a high school pupil to take advantage of the gymnasium for its physical education programs, I ask again how is that conducted? A. The physical education program for Field School?

Q. Yes. A. For the part of it that's conducted at the gymnasium, the students would have to go from the high school over to the—

Q. That's about four more blocks? A. Yes.

Q. So, that, in rainy weather and the like they still—

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A. They use a school bus for that. They don't have to walk over there.

Q. They use a school bus. Now, let me ask you do you know anything about a prior suit to equalize school facilities in this District? A. I don't know anything about it other than just hearsay.

The Court: You asked him that this morning, and he gave you that answer.

Mr. Walker: All right. I want to get into it now. I didn't pursue it at that time.

The Witness: I have not found any records of any.

Q. You have not found any records of any suit. Who was the Board's attorney in Gould? A. We do not have an attorney for the Board in Gould.

Q. Well, when you have persons to do legal matters, or work for you, what record is kept of the decisions and the like that are entered either for you or against you? A. Since I've been there we have been keeping them in the

Minutes of the Board. Now this is the first time we have been in a position where we needed to have a lawyer.

Q. All right. Now, are you aware that a prior consent order was agreed on by the School Board, and certain

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persons in the Negro community there, whereby the School District agreed to equalize facilities? A. I do not know anything about that other than—.

Q. In 1954. A. (Continuing)—what I've been told, just by asking around. Nobody seems to know any definite answers about it.

Q. Don't you have any records? A. There's no records in the office. I looked through our file of School Board members and I couldn't find any records.

Q. Haven't Negro patrons brought this matter to your attention since you've been Superintendent? A. That there was a prior suit?

Q. Yes. A. No, not that I recall, nobody mentioned it.

Q. Now, with regard to the political rallies that you speak of, I was under the impression that most of the pupils that participated in the picket around the court-house here, in Little Rock, were pupils? A. Some of them were but most of them were not.

Q. How do you justify excluding the PTA from meetings in the Field High School, when some of those people might not have been pickets, or even if they had been they are still patrons of the District? A. I understand that the

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plans for that march to Little Rock or demonstration at the Federal Building in Little Rock, that plans were made at the PTA meeting.

Q. How do you understand that? A. Well it just began, I couldn't give any definite proof of it. It's just what has been told. They had to meet for something. They had to meet somewhere to make plans for it.

Q. So you are going to cut out their whole PTA program on hearsay? A. We understood pretty well that that's where the plans were made.

Q. But weren't those plans to protest conditions at the Field School—weren't those PTA members constantly protesting to you about conditions in the Field high school? A. As I understand it, the protest demonstration here in Little Rock was against the Federal Court, or maybe the Office of Health Education and Welfare for approving our plan.

The Court: We're wandering far afield.

Mr. Walker: All right, Judge.

Q. Now, of the $138,000 you say you spent on the Negro school, elementary school, since 1954, isn't it true that the 'Lion's Share' of that money, approximately $95,000 of

that money, is actually for the gymnasium which is used by all the pupils? A. I think that the bond issue was around $85,000.

Q. You don't have a copy of the budget? A. No.

Q. Could you tell the Court how much money you spend over at the Field School each year, in comparison with what you spend at the Gould School? A. No.

Q. Do you spend more for the Field School, than you do for the Gould school—high school? A. I would think so. We have more teachers to pay, we pay for operation of the buses and janitorial services and things of that kind.

The Court: Well, that wouldn't be all attributable to the Gould school. It would be attributable to both of them. Mr. Walker wasn't asking you that.

Mr. Walker: I just wonder whether you spent more money on the Negro School—

The Court: He means directly attributable—

Mr. Walker: Directly attribtuable?

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A. I wouldn't answer that. I don't have the figures to show.

Q. But you have said because you have more Negro teachers, you probably would spend more money for teachers at the Negro School than you do at the white school? A. I would think so.

Mr. Walker: At this point, Your Honor, I've already had that identified by Mr. Sage, I would like to have it introduced into the record as Plaintiffs' Exhibit 12.

The Court: It may be received.

(Whereupon, Plaintiffs' Exhibit No. 12, previously marked for identification, is received in evidence and made a part of this record.)

Mr. Walker: This sets out all the teacher's salaries for the District for 1965-'66, and I think, for the record, that it will show that Negroes, in the aggregate, earned considerably less than do white teachers.

The Court: What is that, Mr. Walker?

Mr. Walker: This is a statement which was submitted by the School District to the State Depart-

ment of Education with respect to teacher's salaries for the school year.

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The Court: Mr. Light, are you familiar with that? Have you seen it?

Mr. Light: I have not seen it but I have no objection, Your Honor.

The Court: All right. It will be received.

Mr. Walker: Your witness.

Recross Examination by Mr. Light:

Q. Mr. Sage, I'll ask you if this is a picture of the interior of the toilet facility located adjacent to the Field High School, that's been discussed here—do you recognize that, sir? A. Yes.

Mr. Light: I would like to introduce that, Your Honor, as Defendants' Exhibit 25.

The Court: It may be received.

(Whereupon, Defendants' Exhibit 25, previously marked for identification, is received in evidence and made a part of this record.)

Q. With respect to this donated equipment that was mentioned in Mr. Walker's questioning of you, Mr. Sage, is or is it not true that in a school district the size of Gould that much of the furnishings and equipment in schools are

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donated by the patrons and business houses and parents of students in the District?

The Court: I know that, Mr. Light.

A. That's right.

Q. As a matter of fact is all of the athletic equipment at the Gould high school, has it been donated by the Gould Lions Club? A. That's right.

Q. All of it? A. And private donations—

The Court: That's where you got part of your library too, from the public.

Q. That is true, is it not, part of your Library? A. Yes, sir.

Mr. Light: No further questions.

Mr. Walker: No further questions either Your Honor.

(The witness was excused.)

Mr. Walker: I next call the Principal.

WHEREUPON, HORACE EDDY DALTON, called as a witness

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on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination by Mr. Walker:

Q. Would you state your name please? A. Horace Eddy Dalton

Q. Mr. Dalton, how long have you been Principal of the Field High School? A. Five years.

Q. What is your experience? A. Beg pardon?

Q. What is your prior experience? A. Director of Athletics.

Q. Have you ever been a school administrator before? A. I was administrator in the U. S. Navy in World War II, Company Commander.

Q. I see. What is your educational background? A. Twenty-seven hours toward a Master's Degree at the University of Arkansas, twelve post-graduate hours at Philander Smith College, Special Work, University of Arkansas, Special Work shop course at Philander Smith.

Q. What is your under-graduate preparation? A. My under-graduate preparation, secondary education.

Q. You have a B.S. Degree I take it? A. B.A. Degree.

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Q. B.A. Degree. When is the last time you have had any teaching responsibility before becoming an administrator? A. About four years.

Q. About four years ago. What were you teaching? A. Physical education and coaching.

Q. Was the Gould Field High School your first experience as a principal? A. Yes.

Q. I see. Now, I would like for you to tell the Court, Mr. Dalton, some things about the Field high school. Would you tell the Court whether that high school is in good repair? A. It's not in the best of condition. I can say that.

Q. Have you bought some of the school's needs to the attention of the School Board? A. Yes, I have. Of course, the School Board told me that they were going to build a brand new school between 1966 and 1967, and it wasn't necessary to waste a lot of money on those old buildings.

Q. Now, Mr. Dalton, would you mind telling the Court how many books approximately do you have in the library there? A. Well, actually, since I have been there, I have bought three sets of books.

Q. What do you mean by three sets of books? A. Well just, you know—American Encyclopedia.

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Q. For the record. A. I bought a set last month—American.

Q. Where do you keep those? A. I keep those in the office because that's the only way I can keep up with them.

Q. You don't keep those books that you purchased, out in the library? A. I don't keep them out in the library.

Q. I see. You are in effect are a librarian too? A. That's right.

Q. Would you tell the Court whether or not any of the money that you used to purchase those books came from patrons of the School District? A. Yes, most of all of it came from the white patrons.

Q. You mean through contributions? A. Through contributions.

Q. But it did not come to you from the School Board, directly? A. No, No.

Q. Would you tell us about the Home-Economics Department there. What about the equipment there? A. Most of the equipment was there when I came to work.

Q. That that has been added since you have been there, how was it purchased? A. Well, as a matter of fact, we haven't had any added.

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Q. In the five years that you have been there? A. Yes.

Q. All right. Let us go to the Biology Department. Would you tell the Court how many, say test tubes—that's all I know—do you have there? A. Yes, I bought a lot of equipment last year. Test tubes, burners, and so forth, and keep them locked up in a special place because they will get away too.

Q. Do you permit the pupils to use it during any time of the day? A. That's right.

Q. Would you say that your Science facilities, your Biology facilities are adequate? A. No, I couldn't say that.

Q. Would you say that anything that is in the Field high school is adequate? A. Yes.

Q. What would you say is adequate there? A. Our gymnasium is adequate, our elementary department is adequate and I can also say that, in the long history of Gould, we never had any rating in any part of the school until last year. In my second year we got a C class rating in the elementary department.

Q. Do you know what the white elementary department's rating is? A. No, I don't.

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Q. I want to ask you something about the fees, Mr. Dalton. Have you ever required any of these pupils, any classes of Negro pupils to take time away from school to go to pick cotton to raise money? A. Now, actually what has happened, before I came there they had been doing it for years. They did it at Menefee—I worked at Menefee almost twenty years. The class would go out and pick cotton in order that the class should win "C". Now, we had a lot of complaints last year about this picking of cotton, so this year Mr. Sage told me there wouldn't be anymore picking cotton.

Q. How do you raise your money? A. We raise our money by selling hot dogs, socials or what not.

Q. Have you pointed out to the School District that you don't have a hot lunch program and that you need one? A. We worked on it last year.

Q. Did you get one last year? A. No we didn't get it, but I'll tell you what actually happened before—we had a hot-lunch program before but they wouldn't support it.

Q. All right. Let me ask you, do you permit the PTA to meet in your school? A. If it's a PTA, yes.

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Q. How do you determine whether it's the PTA? A. How do I determine whether it's the PTA? By the election that we had last month.

Q. Go ahead. A. We had a railroad election last month and people that don't belong to the PTA came there and voted. I know that to be a fact.

Q. But nonetheless you don't let them meet there now. Mr. Dalton, would you tell the Court specifically what improvements you think need to be made now, for the duration of this term, at the Field high school, in order to afford the pupils there a far better education than they are now getting? A. Well, Mr. Walker, really, the best thing I can see for improvements, is more buildings. We have a good faculty. The teachers are interested in the children and also the school program. There is nothing too much we can do at the present time with the type of facility that we have.

Q. There has been a few questions about the conditions within the school. Now those schools are heated with gas, aren't they? A. That's correct.

The Court: How long have you had gas at Gould —about two or three years?

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The Witness: Longer than that.

Q. I show you that for identification and ask you if you recognize it? A. Yes, I do.

Q. Would you tell the Court what it is? A. It's a gas stove.

Mr. Walker: I would like to have that introduced, Your Honor.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 13 previously marked for identification, is received in evidence and made a part of this record.)

Q. Now, would you say that those are the kinds of stoves that you have throughout the high school building? A. Well, those are the latest type. I'm sure of that because we bought one last year. It is insulated.

Q. All right. Now, Mr. Dalton, isn't it true that that building has a lot of cracks in it and, you know, wind just blows through during the winter time, and rain comes in through those facilities? A. No, no.

Q. That's not true? A. No, it is not.

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Q. I show you this. Do you recognize that as part of the floor?

The Court: I think everybody agrees that the building is thoroughly unsatisfactory, Mr. Walker.

Mr. Walker: I introduce 14 and 15.

The Court: They are received.

(Whereupon, Plaintiffs' Exhibits 14 and 15, previously marked for identification, are received in evidence and made a part of this record.)

Q. Mr. Dalton, just one further thing. You know the Board initiated the Freedom of Choice plan last year? A. That's right.

Q. Now, did you ever have occasion to tell any of the Negro pupils, before they made any choices, that if they

made choices for those white schools that they would in all probability have academic difficulties over there and if they went over there and failed you weren't going to let them come back? A. No. I didn't tell them that. Actually, I know from where that information came. It didn't come from me.

Q. That's all right. I have no further questions.

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Cross Examination by Mr. Light:

Q. Without regard to whether the Field high school is a pretty building or not, Mr. Dalton, is it warm enough in the Winter to be comfortable where the student can do the work? A. Yes, sir.

Q. All right. You've been principal of the high school for three years, is that correct? I believe Mr. Walker misstated and said "five". A. Yes, sir.

Q. Are you also charged with the responsibility of being Principal of the Field Elementary school? A. Yes, sir.

Q. And have you had both of those jobs for the full three years? A. I have.

Q. In that capacity, have you had occasion to work regularly with Mr. Sage and with the members of the Gould School Board? A. I have.

Q. Have you found them interested in, and cooperative with, the program you had in your schools? A. One hundred percent.

Q. Have you found them willing to donate personally from their own pockets for the projects you had in those

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schools? A. Yes, sir.

Q. Every one of them? A. Every one.

Q. With respect to the library books maintained in your

office, did I understand you to say that the reason they are not kept out in the library is because of the problem of possible theft? A. That's right.

Q. Now, are the books kept in your office freely available for the students' use? A. Yes, sir.

Q. Do they in fact use them? A. Yes, sir.

Q. Now, you have indicated that some of the money with which you purchased library books recently, came from private donations? A. Yes, sir.

Q. In addition to that, the School Board furnishes you an allocation each year of School District funds to purchase books, does it not? A. Yes, sir.

Q. Do you happen to recall what the recent allocation furnished by the District to you for that purpose was? A.

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Three hundred dollars.

Q. Now, with respect to the hot-lunch program that was once maintained at the Field School, you mentioned that they wouldn't support it. Would you explain that a little more, when they had a hot-lunch program? A. Well, actually, they had the hot-lunch program. You know if the students don't eat with the hot-lunch program, you cannot support it, and these students would take their money and buy candy and what not.

Q. You have to have a certain minimum number of students utilizing a program such as that to keep it in a financially sound basis— A. Yes, sir, and at Forrest City they are having the same trouble now.

Q. In other words, you didn't find sufficient economic demand for that lunch—not enough using it—to keep it going. Is that correct? A. That's right.

Q. But you understand the Board is now in the process of getting ready to build a cafeteria on the Field Elemen-

tary school grounds for the use of both schools? A. That's right.

Q. Thank you very much.

Mr. Walker: Your Honor, I don't care to extend the hearing unnecessarily and unduly. I would like

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to have the Court's advice as to whether you deem it important for us to put on testimony to show that there was, perhaps, discouragement on the part of the School Administrative Staff?

The Court: Well, if you like. If they have denied it categorically.

Mr. Walker: All right. And also testimony tending to show that repeated demands have been made to have the Administration improve the facilities at the Gould school?

The Court: I assume that to be true.

Mr. Walker: All right, Your Honor. Well, in that case, I want to call one of the young ladies.

(Waiting period.)

Mr. Walker: That's all right, Your Honor, we won't put on anything further.

The Court: Plaintiffs rest.

Mr. Light: Since this is a non-jury case, I suppose there's no point in making a Motion?

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The Court: I wouldn't think so.

Mr. Light: Then I'll call a single witness, Mr. Sheppard.

WHEREUPON, W. C. SHEPPARD, JR. called as a witness on behalf of the defendants, being first duly swprn, testified as follows:

Direct Examination by Mr. Light:

Q. State your name please sir. A. W. C. Sheppard, Jr.

Q. Where do you live, Mr. Sheppard? A. Gould.

Q. What's your business? A. Farmer.

Q. How long have you lived in and about Gould, Arkansas? A. Forty-four years.

Q. Are you connected in any way with the Gould School District? A. President of the Board.

Q. How long have you been a member of the Gould School Board? A. Approximately eight years.

Q. Are you, in addition to being the President, also the

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senior member with respect to years of service? A. Yes, sir.

Q. There has been some mention here of a lawsuit against the Gould School District some fifteen years or so ago. Do you have any knowledge or acquaintance of that lawsuit? A. No workable knowledge.

Q. The lawsuit occurred, if it did occur, before you commenced your service, is that correct? A. Right.

Q. Are there, to your knowledge, any papers among the records of the District reflecting anything as to that lawsuit? A. None to my knowledge.

Q. All right, sir. Did you participate as a member of the Board of Directors in the evolution and adoption of the desegregation plan that the District is now working under? A. I did.

Q. Can you tell the Court approximately when the serious discussions among the Board members in meet-

ings commenced with respect to adopting this plan? A. Restate the question please.

Q. When did the members of the Board start devoting considerable time to various discussions about adopting a

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desegregation plan and trying to decide what kind to adopt? A. After it became evident that we were going to have to integrate and it was the coming thing and we had to adjust to it, we sat down and gave it considerable consideration and tried to figure out the most workable consideration for our community.

Q. Did you meet with any people in the community and seek out their assistance and guidance and counsel in this process? A. Yes, we had special meetings both at the white school and the colored school before we formulated any plans. We had the same meetings after the plans had been formulated, and passed on all the information to both sides, both white and colored patrons.

Q. Were you aware, Mr. Sheppard, at the time you finally adopted this plan, that the Department of Health, Education & Welfare was approving many plans requiring three years to complete the desegregation process? A. We were.

Q. Why did your Board, in light of that information and knowledge, decide to desegregate entirely in September 1965? A. Like I said before, we realized that it was coming. We had to adjust to it. We thought our best

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solution was if we started at the first through the twelfth —reach all the grades—it would be easier for each individual, for each class, to adjust, rather than picking out a few grades and isolating them, and say "Well, you're picking out my kids to go to this school and my kids to

go to that one", and we thought we would give them all a freedom of choice and work out a plan that we could live with in the community and would make work, and in the cases where it was overcrowded and we didn't think it could possibly work, it would jeopardize the education of not only the colored students but the white students and everybody concerned, we wouldn't take on any more students than we could handle at the present time. We would absorb all the students that we could possibly handle and not jeopardize their education, or lower our education plans at either school.

Q. As far as the educational programs' conduct on the school properties in the District, has the plan proceeded satisfactorily? A. We have had wonderful cooperation out of the white people and the colored people. I'd say that we have got ninety-five percent of the cooperation out of both sides. And the Board as a whole—if I might elaborate just a little—has gone out of our way in going to

athletics—not just the Board, but all the people, to go to our athletic program, or any social functions and to discourage any violence or any nagging, or anything of that nature, not only with the white patrons, but the colored patrons, we've had wonderful cooperation. We've got a small minority that's not interested in our schools or our people or our economy or our welfare that don't even have kids. We haven't had any trouble out of people that's got kids that's going to school—colored or white. We've had wonderful cooperation out of them.

Q. There has been some suggestion here today that undue influence or coercion may have been exerted with respect to the exercise of the free choices that each student in the District was to have. Is there any truth to that, as far as you know, Mr. Sheppard?

Mr. Walker: Your Honor, I think this is a question that only the Superintendent—or one person, a member of the Staff can answer.

The Court: He can answer it to the extent of his knowledge. I don't know whether he knows it. You can only answer to the extent of your own knowledge.

A. Rephrase the question so that I'll know that I'm an-

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swering what you are asking.

Q. Do you have any knowledge of any such coercion or undue influence attempted to be exercised with respect to the students making their choices, that are allocated under this plan, by any employees or representatives of the Gould School District? A. None whatever, by no member of the faculty, no member of the School Board, or no farmers. In fact we have encouraged colored people to send their kids up to the white school. To the contrary, they have failed and refused—people that we thought we could talk with if something come up, that we could adjust the situation. There hasn't been any economic pressure put on. Almost every member of this Board has got colored people living on their farm that have colored children in the white schools.

Q. With respect to the fees, Mr. Sheppard, what fees are authorized by your Board to be charged to any of the students? A. None whatsoever at either school. There is fees, additionally, for equipment that the kids have to have that if it's not provided, if the parents can't afford to buy that additional equipment, and they have a project to make money, that's been done since the history of the school, both white and colored, they are permitted to and

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have through the past on off-duty hours to raise funds to pay for pencils or paper or library books, anything that the school did not have the money to furnish.

Q. I'll ask you this, with respect to pencils and supplies and work books, and things of that character that are not supplied and paid for by tax money by the District, if a child can't afford, or his parents can't afford, to purchase that, is it the practice and policy in the Gould School District to supply to that child? A. It is if at all possible. If not done by the schools, an individual will.

Q. What has the Board done during the some eight years that you have been a member, to equalize the facilities available to all the children of the District? A. We have spent seventy-five percent of the tax money on the Negro school system in the past fifteen years.

Q. When the plans that you now have—

The Court: You say the last fifteen years?

The Witness: Yes, sir. Eight of them I've been on the Board.

Q. (Continuing) When you complete the construction of the proposed high school, what will be the relative—strike that and let me approach it this way—When you complete

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the construction of the new high school, would you compare for us then the physical facilities that will exist as between the Field School and the Gould School? A. We will have more money invested in the Field High School System than we do in the Gould High School System.

Q. I did not mean to confine that to high school only. When I say "Field School" I mean grades one through twelve— A. You call it "System". I'm referring to the

Field High School System is one through twelve and the Gould High School System is one through twelve.

Q. Your physical plant will be more modern and far superior at the Field School, is that correct? A. Correct.

Mr. Light: That's all.

Cross Examination by Mr. Walker:

Q. And you say seventy-five percent of the District's fund have been spent on the education of Negro pupils in the last fifteen years? A. I didn't say "education".

Q. Well, what for? A. Facilities.

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Q. For facilities? A. Educational facilities.

The Court: The amount spent for capital improvements?

The Witness: Yes.

Mr. Walker: At this point, Your Honor, I would like to put forth a request, since we don't have anything to counter this, that the defendants provide the Court and counsel with a statement reflecting their expenditures for the last fifteen years.

The Court: Are you talking about capital improvements? That's what he is talking about.

Mr. Walker: That's right, capital expenditures.

The Witness: Perhaps you will find it in your files. We've got it filed on record with you. (Addressing the Court.)

The Court: I don't understand myself what he is talking about. See what details you can get now.

Mr. Walker: All right, Your Honor.

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Q. (Mr. Walker, continuing) First of all, we're talking about school buildings, aren't we? A. Right.

Q. Now, you're saying that between 1950 and 1965, three-fourths of every dollar that the District has received has been spent on buildings for Negroes?

The Court: He didn't say that. He didn't say that three-fourths of every dollar—

Mr. Walker: Seventy-five percent of the funds of the District.

The Witness: I said three-fourths of every tax dollar has been spent on the Negro School System, since our last bond issue which the records will show was 1954.

The Court: Let me see if I understand it. You mean out of every dollar of tax receipts—

The Witness: Right.

The Court (Continuing) —an amount equivalent to seventy-five percent—not out of every dollar or not out of every year—but over the total, seventy-five percent, or three-fourths, approximately, of all tax dollars received have been spent on capital improvements in the Field System?

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The Witness: Correct.

The Court: I understand what he is saying, Mr. Walker.

Mr. Walker: All right.

Q. (Mr. Walker, resuming) Now, let's go over those things. You are really going back to 1954, aren't you, rather than 1950? A. The last bond issue which was when

they built this elementary—which is now the elementary school at Gould High School, since that date.

Q. It was 1954. So, that's eleven years. A. The last tax money spent on the Gould School System was when they built what we use now as the Elementary School. I believe that would be in 1954.

Q. So, you're saying that tax money—the tax dollar—rather than income, was spent on capital improvements. A. That's the only income we have.

Q. And you are excluding this new school that you all built? A. The new school came from insurance replacement and tax money. It had to be—

Q. How much tax money did you put with that to

build this new school? A. We put approximately—and if I'm incorrect in that Mr. Sage can correct me—we borrowed approximately $20 thousand or $21 thousand. About seven of that was used to pay off old indebtedness. About three of it was used to complete the dressing rooms at the new school. Nine thousand of it was used to build two new classrooms at the Field Elementary School that the paint is still wet on.

Q. All right, let's go back over this. Just tell the Court, since 1954 what have you built for Negroes in the School System? A. Since 1954?

Q. Yes. A. We built nine classrooms. We completed the "gym" and auditorium with all the dressing rooms as modern as modern could be made.

The Court: The "gym" and what?

The Witness: And stage and dressing rooms. They built nine new classrooms, and the gymnasium and auditorium with the stage, and the dressing rooms and all was built with it.

Q. (Mr. Walker) Is that all you built? A. That's all.

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Q. Now, that's a total cost of $138,000? A. They got the figures—approximately that cost.

Q. Now, you came onto the Board in 1957, is that right? A. I've been on there about eight years.

Q. Now, at that time the decision which you have heard referred to was three years old, and you mean to say that you don't have any knowledge of that decision? A. Sure, I have knowledge of it.

The Court: What decision?

Mr. Walker: This is the equalization decision whereby the District agreed to equalize facilities.

Mr. Light: Your Honor, may I ask at this point, as recently as Monday when Mr. Walker and I had a conference in Gould, he and I both were still ignorant on that decision and he said he was still looking for it and I was still looking for it, and I haven't found it yet, if Mr. Walker has got it, I would be interested in seeing it.

Mr. Walker: I will make it available to you. I haven't got it yet either. I've only looked at it. It was in the lawyer's office who handled the case back in 1954.

The Court: Who handled the case?

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Mr. Walker: Harold Flowers. The Court might recall Mr. Flowers had a number of equalization suits at that time, one against the DeWitt District and one, of course, against this District—

The Court: Who represented the School District?

Mr. Walker: Mr. Meek of the Rose, Meek Firm.

Q. (Mr. Walker, resuming) But you have not spent any money at all, have you, on the high school facility since 1954? A. At either school?

Q. I mean at the Negro school? A. Both of them.

Q. But now, all this time, the Board has recognized that that Negro school has been grossly inferior, hasn't it? A. Sure.

Q. You've done nothing about it? A. We've done all we possibly can. We've exhausted every tax dollar we had available. We've done all that possibly could be done.

Mr. Walker: That's all.

Mr. Light: I have no further questions, Your Honor, and the defendants rest.

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The Court All right.

Mr. Walker: Your Honor, at this time, we would just like to put on one more witness.

The Court: In rebuttal?

Mr. Walker: Yes, Mrs. Carrie Dilworth.

WHEREUPON, MRS. CARRIE DILWORTH, called as a witness on rebuttal, on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination by Mr. Walker:

Q. Would you state your name please? A. Carrie Dilworth.

Q. Where do you live Mrs. Dilworth? A. Gould, Arkansas.

Q. Are you employed? A. No, a housewife.

Q. Are you one of the adult plaintiffs in this litigation? A. Yes.

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Q. Now, Mrs. Dilworth, I ask you if you were a plaintiff in an earlier action against this School District? A. Ever since the roving law school I have been working for it, since 1924.

Q. Is the roving law school that you refer to, the Field School? A. The roving law school is the Field—

Q. Is that the same building? A. The same building.

Q. Built in 1924. Has that building been improved at all since 1924? A. A little bit because they keep it painted up, and they made some additions inside the classrooms and things like that.

Q. Now, Mrs. Dilworth, in 1954, when you and other persons in Gould sued the School District for Gould, what did you seek to have at that time? A. Equal facilities—that's what we asked for, equal facilities.

Q. And do you recall what the decision of the Court was?

The Court: Now, you know I can't—

Mr. Walker: All right, Your Honor.

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Q. Have you had any discussions with members of the School Board about that decision? A. I have.

Q. Your Honor, would you permit some of that to come in?

The Court: Go ahead.

Q. Would you relate to the Court—

The Court: Let's get the times.

Mr. Walker: All right.

Q. (Resuming) Now, when after 1954, after the decision, did you have occasion to discuss the matter with the School

Board members? A. Well, I discussed with them about the hot lunch program.

Q. What year was that? A. That was in about 1954, '55, something like that. I can't tell the exact date.

The Court: When she says "them", if she knows, who did she talk to? Maybe she went to a Board meeting, I don't know. Maybe she talked to them individually.

Mr. Walker: Thank you, Judge.

A. Yes, I talked to them individually, and out at the School Board.

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Q. All right. What was your understanding of what the Board promised to do at that time with regard to the System? A. They promised to bring our school up to theirs before they put any other building on there, but it was ignored.

The Court: But what?

A. It was ignored.

Q. Mrs. Dilworth, since 1954—meaning really since 1958 and '59—have you had occasion as a member of the community, or a member of the PTA or anything like that, to discuss with these Board members and the Superintendent any of the problems of the School District? A. Well, yes, because when they came to us with this Freedom of Choice, I was the one that opened the debate that night. I asked Mr. Sage how much room did he have, and he didn't tell the exact amount, but he said he didn't know, and I told him why I asked, because we didn't have any

choice down at Fields high, and then the debate opened and others asked questions.

Q. All right. Now you heard testimony to the effect that Negro patrons did not support the hot lunch program. Is that true? A. Yes, they done the best they could. The Welfare is better now than it has been. People just didn't

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have the money at that time.

Q. All right. Would you tell the Court, Mrs. Dilworth, whether or not you are presently a member of the Field PTA? A. Yes.

Q. Do you consider the activities that you all have been doing political? A. No, it's not political.

Q. What have been the purposes of your meetings? A. Well, everything we centered on was for the school, but there was times when elections—

The Court: What election?

A. School elections when we elect a new President and things, and whenever the Chair was declared vacant they asked me if I would be chairman and I would take it up, and they couldn't hardly get a nomination, and when they do get the nominations, they got to be carried through, but we couldn't get anybody to nominate nobody.

The Court: President of the PTA?

A. That is right. There was one elected after all, but they were dissatisfied with the election.

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Q. Who was dissatisfied? A. They tell me the Principal was. I don't know who.

Q. But since then you haven't had any meetings there? A. No.

Q. I want to ask you about these cotton picking days to raise money for the School System. Do you know anything about that? A. Yes.

Q. Tell the Court. A. They picked cotton.

Q. Were they required by the School District to do this? A. They picked cotton, some would go out and pick until three o'clock—

Q. How often did this occur? A. Well, each room had their day to pick cotton.

Q. Do you know whether this has happened this year? A. No, not this year.

Q. This perhaps has stopped this year? I have no more questions.

Cross Examination by Mr. Light:

Q. Mrs. Dilworth, it is true, is it not, that the only construction over on the Gould School campus in the past ten years involved the replacement of a building that was burned? Is that correct? A. Yes, they put one new building there.

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Q. That's the only construction that's taken place on that campus where the Gould High School and the Gould Elementary School is, in the last ten years, is it not? A. I don't know that. They built a teacherage there inside.

Q. Is that on that campus? A. That's on that campus.

Q. When did they build that? A. Sometime in the past ten years.

Q. In the past ten years? A. Yes.

The Court: A teacherage?

A. Yes.

The Court: Where teachers live. Is it a bungalow or two?

A. Yes, two families.

The Court: Two-family bungalow?

A. Yes.

Mr. Light: No further questions, Your Honor.

The Court: All right. You may step down.

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Mr. Light: Your Honor, I suppose one or two questions on rebuttal about the teacherage.

The Court: All right.

Mr. Light: Mr. Sheppard.

WHEREUPON, W. C. SHEPPARD, JR., called as a witness on rebuttal, on behalf of the defendants, having been previously sworn, testified as follows:

Direct Examination by Mr. Light:

Q. Mr. Sheppard, are you familiar with the teacherage that's been mentioned? A. Yes, sir.

Q. Would you tell how that came about and when? A. There's two apartments, one for the Principal and one for the Superintendent to live in—living quarters. They didn't have any living quarters. They pay rent on the building. The building money came from a revolving fund. It was not a tax money. The rent is paid from the different apartments and goes back in to pay for the space with the revolving money.

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Q. It's something that the District runs substantially at no loss and no expense? A. No tax money involved. The rent money pays the revolving loan money that was used to build housing for the Principal and the Superintendent.

Q. And about when was that constructed? A. Approximately four or five years ago.

Cross Examination by Mr. Walker:

Q. A question—that's for the white Principal and the white Superintendent? A. Right.

Q. You haven't done the same thing for the Negro Principal? A. We adjusted his salary to take care of his rent.

Q. His salary is still less than the white Principal's and the white Superintendent's? A. Correct.

Mr. Light: Nothing further, Your Honor, and the defendants again rest.

The Court: All right. Anything further?

Mr. Walker: No, Your Honor, other than I would like to move the Court—

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The Court: Just a moment before you do that. I would like to ask Mr. Sage one or two questions.

Whereupon, T. Raymond Sage, resumed the witness stand for questions by the Court:

By the Court:

Q. Mr. Sage, did you say this morning that your Plan that's filed with the—I don't know what the office is, they

call it the HEW in Washington—contemplates that you will have freedom of choice in all the grades this next September? A. Yes, sir, in all twelve grades.

Q. Do you think that the situation you had this year might reoccur? A. We have no way of knowing. Of course, we are hoping that it won't because we are improving the facility as much as we can at the Field School. One of the reasons given for wanting to transfer was the lack of a lunch-room. They won't have that. They will have a lunch-room before this year is out.

Q. You are not planning on enlarging the facilities—that is the classroom facilities at either school this year? A. That's right.

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Q. What about this increased number of pupils in the fifth, tenth and eleventh grades? Would that move up one grade? Will the same pupils continue to attend, if they do? A. If they do we will take care of them the best we can.

Q. Suppose that two hundred of them choose to come over there? A. There will be a lot of sitting up at night worrying. We will have to make some provision.

The Court: Thank you, Mr. Sage. Anything further gentlemen? You have a Motion, Mr. Walker.

Mr. Walker: Yes, sir. Your Honor, in our prayer for relief, we pray the Court that the defendants be enjoined from expending any funds for operation or improvement of the predominantly white Gould public schools until and unless Field school is made substantially equal in facilities, equipment, et cetera, et cetera. I would like to have that request stricken, Your Honor, do you want me to read the full request?

The Court: Is it in the Complaint?

Mr. Walker: Yes, it is, it's No. III, Paragraph 12.

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The Court: Yes, I see it.

Mr. Walker: Well, we would like to have that request stricken, Your Honor, and substitute in lieu thereof the prayer to have any future high school facilities in the Gould School System constructed on or near the premises of the present Gould high school, which is now attended predominantly by white pupils, and we pray that the Court consider this as a part of our full prayer for relief.

The Court: Anything further?

That concludes the evidence and the proceedings in the case except, of course, for the Court's decision and the possibility of briefs from counsel, which I will talk about with counsel shortly. These cases always involve a great many intangible factors and some problems that, on account of money, just cannot be solved overnight. The disparity in these school systems didn't happen over-night. It came about over a period of years, and it will not be changed over-night. Of course, there was never any excuse or rational reason why the facilities of the schools attended predominantly by colored people should be inferior to that of whites. The

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point is—no one wants to wreck a School System—the point is how quickly, under the circumstances, with the money available—and, fortunately, there is money now available from the Federal Government which wasn't available before this year—how quickly can those situations be ameliorated. I know

that this is not a rich School District, agricultural as it is, without industry, and, frankly, I don't see any prospects of much industry coming into the Gould School District within the next few years. The facilities used by the white children—that is predominantly white—would be considered inferior in most of the sections of this Country, and the facilities used predominantly by the colored or even worse. Those conditions for both the white and the colored do not reflect much credit on our Society. At any rate I'll take the case under advisement and render a decision as soon as I can. Court will be adjourned.

(Whereupon, the hearing closed)

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REPORTER'S CERTIFICATE

I, Ella West, hereby certify that on November 24, 1965, I was the official reporter for the United States District Court, Eastern District of Arkansas; that as such reporter, I attended the trial captioned Arthur E. Raney, et al., versus Gould School District Board of Education, on said date before The Honorable Gordon E. Young, Judge of said court; that the parties were present by their attorneys; that I took down in shorthand all proceedings had at said trial and reduced same to typewriting, and that the foregoing pages of typewritten matter constitute a full, true and correct transcription of the proceedings taken on November 24, 1965, in said above-captioned case.

WITNESS my hand this 1st day of April, 1967.

/s/ ELLA WEST
Court Reporter

Affidavit on the Status of the New School Construction in the Gould School District (April 28, 1967)

IN THE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 18527

CIVIL

ARTHUR LEE RANEY, by his mother and next friend, MRS. ROXIE RANEY, *et al.*,

Appellants,

v.

BOARD OF EDUCATION OF THE GOULD SCHOOL DISTRICT,

Appellee.

AFFIDAVIT

STATE OF ARKANSAS,
COUNTY OF PULASKI, ss.:

I, John W. Walker, being duly sworn, state:

(1) I am one of the attorneys for the appellants herein, and I have had occasion to travel to Gould, Arkansas in the last week and observe the state of the construction of the proposed new high school for Negroes (to be known as the Field High School) in the City of Gould, Arkansas.

(2) The Field High School for Negroes, now under construction, is being constructed on the premises of the Field Elementary School for Negroes, adjacent to the Field Elementary School and the gymnasium which were constructed several years ago.

(3) The construction of the new Field High School is partially complete but, to my observation, much work remains to be done. A number of the walls are not in; plumbing facilities and fixtures have not been added; much work remains to be done on the interior walls and upon the ceiling or roof; much work remains to be done on the floors, unless, of course, said floors are to be concrete; all of the doors and windows do not appear to be in; and a significant drainage problem will have to be corrected before the building will be ready for occupancy.

(4) The site of the new construction is approximately 10 or 12 blocks from the existing predominantly white Gould Elementary and High School.

Signed:

JOHN W. WALKER

Subscribed to and sworn before me,
a Notary Public, this 28 day of April,
1967.

ANDREW JEFFRIES
NOTARY PUBLIC

MY COMMISSION EXPIRES:
DECEMBER, 1968.

Opinion of United States Court of Appeals For the Eighth Circuit

[Filed August 9, 1967.]

Before VOGEL, Chief Judge, VAN OOSTERHOUT and GIBSON, Circuit Judges.

VAN OOSTERHOUT, Circuit Judge.

This timely appeal is taken from final judgment dismissing a class action brought by plaintiffs as parents and next friends of sixteen minor Negro students attending grades five, ten and eleven of the defendants' district Negro school against the Board of Education of the Gould School District pursuant to 28 U.S.C.A. § 1343(3) and 42 U.S.C.A. § 1983, seeking injunctive relief. The prayer of the original complaint is to enjoin the defendant Board from:

> "(1) requiring minor plaintiffs and all other similarly situated to attend the all-Negro Field School for the 1965-66 School Term;
>
> (2) providing public school facilities for Negro pupils in Gould, Arkansas which are inferior to those provided for white pupils;
>
> (3) expending any funds for operation or improvement of the predominantly white Gould Public Schools until and unless the Field School is made substantially equal in facilities, equipment, curriculum, advantages, opportunities, etc. to the predominantly white Gould schools; and

(4) otherwise operating a racially segregated school system."

At the close of all of the evidence, plaintiffs amended their complaint by striking item (3) above set out and substituting in lieu thereof:

"the prayer to have any future high school facilities in the Gould School System constructed on or near the premises of the present Gould high school, which is now attended predominantly by white pupils, . . ."

Upon appeal, plaintiffs again altered their position and urged that the Board be restrained from using the new building construction as a replacement for the Field High School and that instead, the building be converted into a unit of a completely integrated grade school. The issue last stated is raised for the first time upon appeal and was not presented to the trial court and no opportunity was afforded the parties to offer evidence on the feasibility of such a plan, nor was the trial court given any opportunity to pass thereon. It is fundamental that issues not presented to or considered by the trial court cannot be considered upon appeal.

The trial court, in our view, states the issues properly raised by this appeal as follows:

"The question before the Court is actually two pronged. First, is this Court authorized to tell the school board where to build or not to build a new school building, and second, should the Court do so under the circumstances in this case?"

The trial court on the first issue recognized that under appropriate circumstances a constitutionally discriminatory construction program could be enjoined, stating:

> "However, this Court is not prepared to state that there might not be circumstances under which the Court would be justified in taking action such as that the plaintiff is asking for in this case. Assuming without deciding that this is an area of school policy-making which the Court could enter to protect the civil rights of the school district's citizens, this Court does not feel that the circumstances of this case merit such action."

Our recent decision in *Kelley* v. *Altheimer*, 8 Cir., . . . F.2d . . . (April 12, 1967), recognizes that a court may enjoin a construction program which is designed to perpetuate segregation. The supporting facts in *Altheimer* are far stronger than those in our present case. We recognized in *Altheimer* that injunctive relief against construction could not be effective after a building is constructed. Such appears to be the situation here.[1]

The trial court as a basis for its refusal to exercise its equitable powers to grant the injunction requested states:

> "Here the school board has begun a desegregation program for all twelve grades without having been ordered to do so by a court. The delay in the program for the three grades involved in this case is

[1] Attached to plaintiffs' brief is an affidavit of their attorney dated April 28, 1967 which states that the building in controversy is under construction and from which it would appear that considerable progress had been made upon such construction.

temporary and future plans call for complete integration. The fact that the Negro children who are attending the previously all-white schools are participating in the school's curricular and extra-curricular activities seems to indicate that this plan is more than a pretense or sham to meet the minimum requirements of the law.

"The availability of campus area in one place and not the other, the lack of funds to procure more land, and the necessity of locating the new high school near the existing gymnasium designed to accommodate the high school students are all valid reasons for the administration's decision as to the location of the new high school. There is no reason to assume that only Negro students will attend the new high school. In fact, it is a virtual certainty with the progress of integration, building space limitations alone will insure that the new school will be integrated. Certainly these reasons, coupled with the school board's recent initiative toward integrating the schools, do not indicate that the board's plans are solely motivated by a desire to perpetuate or maintain or support segregation in the school system. Therefore, the Court will not usurp the normal managerial prerogative of the school board to the extent of determining where the new building will be located."

We note that the Field High School which was being replaced is the oldest building in the school system. The bulk of the evidence in this case is directed at its many deficiencies and dilapidated condition. The Negro segment of the community had for years been insisting that

a replacement of such building be made and continued to assert such position throughout the trial and at least until the amendment made at the close of all of the evidence hereinabove set out. Reference is made in plaintiffs' testimony to an alleged prior action which purported to require the Board to give priority to the upgrading of the Field High School and the Board's commitment so to do. The evidence discloses that the district is weak financially and that prior construction was largely prevented by statutory limitations upon bonded indebtedness. It would appear that such obstacle would be cleared up by the completion of payments on prior bonded indebtedness by 1967. There is absolutely nothing in the record to indicate the nature of the plans for the new high school building under construction on the Field elementary school grounds. The evidence does disclose that a gymnasium and certain other facilities on such ground already in existence had been used and would continue to be used by students in the Field High School. Moreover, there is no showing that the Field facilities with the new construction added could not be converted at a reasonable cost into a completely integrated grade school or into a completely integrated high school when the appropriate time for such course arrives. We note that the building now occupied by the predominantly white Gould grade school had originally been built to house the Gould High School.

As pointed out by the trial court, the defendant Board had voluntarily adopted a desegregation plan for the schools which it operates, the plan to be in effect in September 1965. Such plan went considerably beyond the minimum requirements of the Department of Health, Edu-

cation and Welfare (H.E.W.), providing for immediate unrestricted freedom of choice of school attendance on the part of all students, and provision was also made for faculty desegregation. The desegregation plan is similar to a plan we indicated would be approved in *Kemp* v. *Beasley*, 8 Cir., 352 F.2d 14.

Subsequently, when the students exercised the freedom of choice provided for by the plan, it developed that grades five, ten and eleven would be seriously overcrowded which led to an amendment making the freedom of choice inoperative for the 1965-66 school year with respect to grades five, ten and eleven but fully effective thereafter. The plan as amended was approved by H.E.W. As stated in *Kemp* v. *Beasley*, supra, final responsibility for determining the constitutionality of desegregation plans rests with the court but H.E.W. guidelines are entitled to considerable weight.

In *Clark* v. *Board of Education of Little Rock Sch. Dist.*, 8 Cir., 374 F.2d 569, we approved a freedom of choice plan similar to that adopted by the Board here. We stated:

> "[W]hen a student is given a well publicized annual right to enter the school of his choice, coupled with periodic mandatory choices as set forth in the Board's amended plan, we can find on the face of it no unconstitutional state action. . . .
> Therefore, if in fact all the students wishing to transfer were fully accommodated, the Constitution would unquestionably be satisfied, and apparently under these circumstances petitioners would have little objection to the plan's operation. . . ." 374 F.2d 569, 571-72.

We recognized in *Clark* that a plan appropriate on its face could be unconstitutionally administered and observed that in case of such a development, the District Court upon appropriate application could do what is necessary to bring the plan up to constitutional standards.

Prior to 1965, the defendant District had operated an all-Negro school known as the Field school and an all-white school known as the Gould school on a segregated basis. The district is a predominantly agricultural district with little industry. The population is approximately 3,000 of which 60% are Negro. There are about 880 students in the system of which 580 are Negro.

Under the freedom of choice plan adopted, all students expressed their attendance preference. Seventy-one Negroes who expressed a preference for the Gould School were accepted for attendance at that school. All preferences except those for overcrowded grades five, ten and eleven were fully respected. Twelve of the forty Negro students applying were accepted in grades five, ten and eleven. Those who were accommodated at Gould lived the greatest distance from Field. Under the plan all preferences are to be honored commencing with the 1966-67 school year.

The evidence shows that the defendant Board has taken substantial steps to narrow the gap between the salaries paid to white and Negro teachers and that any discrepancy in this respect will be completely eliminated by the 1966-67 school year. The superintendent as a witness also stated that no teachers would be discharged as a result of the integration. It also appears that the transportation of pupils has been integrated.

The enrollment at the Gould school in 1965-66 consisted of 71 Negro students and 298 white students. Thus substantial progress toward integration has been made in the first year of the plan's operation. With the restricted grades open for freedom of choice and upon the basis of the favorable acceptance of the Negro students at the Gould school, it is reasonable to anticipate that integration will rapidly progress as predicted by the trial court.

The complaint charges coercion has been used against integration. The Chief of Police of Gould was named as a defendant on this charge. The case was voluntarily dismissed by the plaintiffs against him. There is no substantial evidence that any coercion was exercised to deter Negro students from electing to attend the white school. The record fairly shows that the integration plan has operated smoothly and that the Negro students have been encouraged to elect the white school.[2]

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[2] The testimony of the president of the school board includes the following:

"We have had wonderful cooperation out of the white people and the colored people. I'd say that we have got ninety-five percent of the cooperation out of both sides. And the Board as a whole—if I might elaborate just a little—has gone out of our way in going to athletics—not just the Board, but all the people, to go to our athletic program, or any social functions and to discourage any violence or any nagging, or anything of that nature, not only with the white patrons, but the colored patrons, we've had wonderful cooperation. We've got a small minority that's not interested in our schools or our people or our economy or our welfare that don't even have kids. We haven't had any trouble out of people that's got kids that's going to school—colored or white. We've had wonderful cooperation out of them.

. . . . .

"Q. Do you have any knowledge of any such coercion or undue influence attempted to be exercised with respect to the students

The trial judge by reason of his presence at all stages of the trial has the feel of the case. The court's findings are based upon substantial evidence and are not clearly erroneous. Moreover, the trial court has a large discretion in determining whether an injunction should be granted. See 43 C.J.S.2d Injunctions §§ 14, 15, and cases there cited.

Plaintiffs have failed to demonstrate that the trial court abused its discretion in denying the injunction here sought.

Plaintiffs alternately upon this appeal ask us to issue a comprehensive decree governing the desegregation process similar to that in *Kelley* v. *Altheimer*, supra. The record in this case does not warrant such relief. Unlike the Altheimer situation, no attack has been made in the pleadings on the desegregation plan adopted by the Board. Additionally, we find no substantial evidence to support a finding that the Board was not proceeding to carry out the plan in good faith.

Primary responsibility for the operation of the public schools rests in the school board. Courts are not equipped to solve the everyday problems of school operation. The court's interference with the Board's operation of its school is justified only upon a showing that the Board in

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making their choices, that are allocated under this plan, by any employees or representatives of the Gould School District?

A. None whatever, by no member of the faculty, no member of the School Board, or no farmers. In fact we have encouraged colored people to send their kids up to the white school. To the contrary, they have failed and refused—people that we thought we could talk with if something come up, that we could adjust the situation. There hasn't been any economic pressure put on. Almost every member of this Board has got colored people living on their farm that have colored children in the white schools."

its operation of its school is depriving pupils of rights guaranteed by the federal constitution.

In *Brown* v. *Board of Education of Topeka,* 349 U.S. 294, 299, the Court states:

> "School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal."

In our present case, no issue on the adequacy of the plan adopted by the Board or its implementation was raised in the District Court. Issues not fairly raised in the District Court cannot ordinarily be considered upon appeal. *Hormel* v. *Helvering,* 312 U.S. 552, 556; *Duignan* v. *United States,* 274 U.S. 195, 200; *Smith* v. *American Guild of Variety Artists,* 8 Cir., 368 F.2d 511, 514.

The judgment is affirmed.[1]

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[1] The evidence in this case was taken on November 24, 1965. Due to disability of the reporter, the preparation of the transcript of testimony was delayed and this has delayed the appeal. Since the hearing in the trial court, the 1966-67 school year has been completed and the 1967-68 year is about to commence. Our decision is based upon the record before us. If subsequent evidence should prove that the defendant Board is not fairly administering its integration plan, resort to the equitable powers of the District Court is open to any aggrieved party.

Judgment

UNITED STATES COURT OF APPEALS

For the Eighth Circuit

September Term, 1966

No. 18,527

Arthur Lee Raney, by his mother and next friend, Mrs. Roxie Raney; Bobby Cox and Annette Cox, by their grandmother and next friend Mrs. Carrie Dilworth; Charles Washington, by his mother and next friend, Mrs. Vertis Frazier; Dennis James Bailey, by his mother and next friend, Mrs. Olens Bailey; Robert Hall, by his mother and next friend, Nonie Mae George; Wyvonne Dale, by her mother and next friend, Laverne Dale; Earnestine Dale, by her father and next friend, E. W. Dale; Irma Jean Clark, by her grandmother and next friend, Mrs. Mattie Harper; Linda Wright, by her grandmother and next friend, Mrs. Blanche Newman; Jake Taylor, Jr., and Linda Austin, by their mother and next friend, Mrs. Beatrice Austin; Willie Lee Jones and Stella Harper, by their parents and next friends, Mr. and Mrs. Rice Harper; Bobbye Carolyn Hadden, by her mother and next friend Mrs. Norma Jean Hadden; Jesteen Jasper, by her father and next friend, Jim Jasper,

Appellants,

vs.

Board of Education of the Gould School District.

Judgment

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

This cause came on to be heard on the record from the United States District Court for the Eastern District of Arkansas, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

August 9th, 1967.

Order Denying Petition for Rehearing

(Filed September 18, 1967)

Appellants' Petition for Rehearing en banc or by the Panel filed in this cause having been considered, It is now here Ordered by this Court that the same be, and it is hereby, denied.

Order of the United States Supreme Court Granting Petition for Writ of Certiorari

(filed January 15, 1968)

No. 805, *Raney, et al.* v. *Bd. of Education of the Gould School District, et al.*

The petition for a writ of certiorari is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 740.